

# STANDARDS OF ALMSHOUSE MANAGEMENT

**A Guidance Manual  
for almshouse charities**



**2025 EDITION**

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*Almshouses are some of our oldest charities, with a long and proud history of providing housing to their beneficiaries. But this important and enduring place in society doesn't happen without the time, skill, and energy of the trustees of these charities. It is the trustees whose commitment and hard work helps ensure that almshouses continue to provide the support envisioned by their original founders, and in a way that reflects modern standards, requirements and expectations around governance and management.*

*The Charity Commission has long supported The Almshouse Association's Standards of Almshouse Management, and we encourage trustees to use this manual as an essential guide to their role.*

***Dr Helen Stephenson CBE, Chief Executive Charity Commission for England and Wales  
2017 - 2024***



# STANDARDS OF ALMSHOUSE MANAGEMENT

## FOREWORD

Almshouses have been in existence for a thousand years which makes them a unique and valuable part of our community and social history. Their architecture and recognisable design are to encourage companionship as well as a sense of security and community, making them in many ways an affordable housing model ahead of its time. It is, however, the spirit with which local trustees make the accommodation available to those in need that makes them truly unique. It is a spirit that is difficult to define, yet residents, trustees, clerks and wardens know it exists and is part of what makes almshouses special places to live.

These small communities have a great significance upon the wellbeing of the residents but the standards by which almshouse charities operate is imperative to keeping that spirit alive within a robust, professional and practical framework. This copy of “SAM”, The Standards of Almshouse Management, is a comprehensive manual for managing an almshouse charity in all aspects. With the support of The Almshouse Association, the Charity Commission, the National Federation of Housing, and taking account of member feedback, it is designed in an easy to access format explaining the steps needed to manage an efficient and effective almshouse, offering context, flow charts and templates. It also helps us, as a movement, to strive for the best standards and working practices in the affordable housing sector.

“SAM” is comprehensive, yet it will not be able to address every situation which is why we have a dedicated team at The Almshouse Association on hand to help. They are just a telephone call or email away to help with the more individual queries that trustees and clerks may face. Please contact Member Services at [admin@almshouses.org](mailto:admin@almshouses.org)

I hope this latest copy, the 8th Edition of “SAM”, makes your life as trustee, clerk or warden easier and gives you confidence knowing that you are working to provide warm, safe secure homes for residents and maintaining the great legacy.

For those of you who are new to the almshouse movement and perhaps reading “SAM” for the first time, we warmly welcome you to the almshouse family.

**Willie Hartley Russell**  
**Chairman of The Almshouse Association**



## Record of Amendments

Edition	Paragraph	Subject	Change made
v8 2025	3.1.5	<b>Charity structures</b>	Clause added stating that in the case of those charities that have become incorporated, in view of their properties being held as permanent endowment, they will still hold their properties on separate unincorporated special trusts which adds complexity.
v8 2025	3.4.4	<b>Charity structures</b>	Additional information added concerning unincorporated charities that become a separate company (company limited by guarantee)- the company will be the sole trustee of the charity-the structure provides the individuals who act as directors the benefit of limited liability. The charity needs to make clear to third parties that the individuals are not 'trustees' but 'directors of the trustee'.
v8 2025	3.5.3	<b>Governing Documents</b>	Wording added: second line 'corporate' trustee; a 'separate' unincorporated trust; fourth line: 'details of those trusts; penultimate line: 'will be found in the Governing Document for the 'permanent' trusts.
v8 2025	3.6.2	<b>Charity structures</b>	<p>Table under 'Governing Document' showing a summary of the relevant provisions for each structure: Resolution of the Trustees further to section 280 Charities Act 2011, added 'and predecessor legislation'. Additional bullet point added thereafter: 'Resolution of the Trustees further to section 280A Charities Act 2011'.</p> <p>Under Amendment to Governing Documents: additional wording added concerning an administrative amendment requiring the trustees to pass a resolution of not less than 75% of trustees, the amendment to be filed at the Charity Commission. Also, a list of categories under which the prior consent of the Charity Commission is needed before a resolution can be passed under the Charities Act 2011, section 280A.</p>
v8 2025	3.6.3	<b>Charity structures</b>	Process for amending Governing Documents-3.6.3 (3): additional wording to indicate that if the governing document does not contain a power of amendment or the power of amendment only permits administrative amendments 'and the amendment falls within a list of amendments that require Charity Commission consent, the consent of the Charity Commission must be obtained before a resolution is passed under section 280A Charities Act 2011'.
v8 2025	3.7	<b>Change of charity structure</b>	added 'to a corporate structure' to paragraph heading
v8	3.7.5	<b>Change of charity</b>	new section added 3.7.5 (a)-(e) incl.: concerns rather than incorporating the charity, the same benefits of incorporation can be



2025		<b>structure to a corporate structure</b>	achieved by creating a corporate trustee using a company limited by guarantee.
v8 2025	7.6.6	<b>Fire Safety</b>	New section added on Personal Emergency Evacuation Plans (PEEPS)- 'Fire Safety in Specialised Housing Guidance'.
v8 2025	7.6.8	<b>Fire Safety</b>	After 7.6.8 under 'Further resources' a new reference inserted to the Almshouse Association website: 'see Fire Safety Audit Check List in Model Policies and Templates
v8 2025	10.17.3 (c)	<b>Records- Reference to medication</b>	Added 'only if volunteered by the resident' in respect of record of medication taken by the resident.
v8 2025	10.25.5	<b>Death of a resident</b>	Point added that if there is no next of kin, the "Responsible Person" can be the local authority, social services.
v8 2025	10.27	<b>Disputes, Conflicts and Complaints</b>	After 10.27.4 under 'Further resources' a reference inserted to The Almshouse Association's website: 'see model Hospital Admission and Discharge template in Model Policies and Templates.
v8 2025	13	<b>Registered Providers of Social Housing</b>	After '13.1.5' and under 'Further resources': a new link inserted to The Almshouse Association website: 'see Guidance-Registered Providers <a href="https://www.almshouses.org/consumer-standards-for-registered-providers/7">https://www.almshouses.org/consumer-standards-for-registered-providers/7</a>
v8 2025	13.5.1	<b>Data Collection</b>	Added a section about NROSH+ being a voluntary 'one-stop-shop' data collection system for Registered Providers of Social Housing.
v8 2025	16.8.2 / 16.8.3	<b>Energy efficiency and Energy Performance Certificates</b>	Amended to state EPCs are not a legal requirement for almshouses but are recommended as best practice. They may be required in the future. It is likely the Government will impose a requirement for residential leased properties to have an EPC rating of C or above by 2030.
v8 2025		<b>Website Links</b>	All defunct links removed



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## **1 INTRODUCTION**

### **1.1 The origin of almshouses**

- 1.1.1 The history of almshouses can be traced back over 1,000 years. Originally many almshouses were referred to as Bede Houses, Hospitals or Maison Dieu. They were generally founded by benefactors to provide a safe, secure home for individuals who were in need. Generally, those in occupation were a particular group of people who the benefactor recognised as being in particular need, e.g., fishermen, miners, retained workers, poor residents of a particular area or pilgrims visiting a holy place.
- 1.1.2 Many almshouses remain that were established centuries ago and the oldest almshouse is thought to be the Hospital of St Oswald in Worcester which was founded circa 990.
- 1.1.3 The majority of almshouses are historic buildings, which are sometimes listed due to their age and heritage value. They are often laid out in a traditional three-sided square providing a sense of security and community, with original features such as dedications, statues, inscriptions, coats of arms, clock towers and sundials and communal gardens. Some almshouses still retain chapels recognising their faith-based heritage and may still hold services.
- 1.1.4 There are a growing number of almshouses that have been constructed in modern times, often to replace historic buildings, which have been built specifically to address the needs of their particular residents, for example, modern accommodation designed specifically for older people to live independently.
- 1.1.5 Whilst a large proportion of almshouse residents are older people, almshouse charities provide homes to people of all ages in line with their charitable objects, which may in some cases include people of working age.

### **1.2 The Almshouse Association**

- 1.2.1 The Almshouse Association is the sole support organisation for almshouse charities in the UK.
- 1.2.2 The membership of The Almshouse Association comprises just under 1,600 charities, providing around 35,000 dwellings across the UK, with the majority of such charities having fewer than 10 almshouses (i.e., individual dwellings).
- 1.2.3 The Almshouse Association is run by a professional team of experienced individuals dedicated to fulfilling the Association's objects which are to:
  - (a) assist trustees of charities to manage their resources effectively;
  - (b) support trustees of charities in providing good quality housing for those in need;
  - (c) promote the welfare and independence of residents; and
  - (d) preserve the historic tradition of almshouses for future generations.
- 1.2.4 The Almshouse Association represents members to government and other organisations and provides help and guidance on a broad range of issues to support trustees and those working in almshouse charities.
- 1.2.5 The Almshouse Association maintains a Panel of Consultants of specialists who are experts in providing all types of services to charities that are responsible for almshouses.
- 1.2.6 Members pay an annual subscription, which gives them access to the following benefits:
  - (a) access to a team of expert advisors and a Help Desk;
  - (b) national representation to Government and relevant regulators;
  - (c) access to this publication, the Standards of Almshouse Management;
  - (d) access to model policies and templates (links to which can be found in this publication);
  - (e) the Almshouses Gazette;
  - (f) seminars, webinars and online training courses;



- (g) information on regional and local meetings;
- (h) support from dedicated Regional Peer Representatives;
- (i) participation in the National Association of Almshouses Common Insurance Policies (**NAACIP**) ([see section 8.9.8](#));
- (j) loans, grants and general funding guidance;
- (k) access to the Members' Forum; and
- (l) details of the Panel of Consultants.

**Further Resources:**

- The Almshouse Association: [Website](#)
- The Almshouse Association: [Application for Membership](#)
- The Almshouse Association: [Members Benefits](#)
- The Almshouse Association: [Panel of Consultants](#)

**1.3 Standards of Almshouse Management**

- 1.3.1 Running a charity and navigating the legislation governing the provision of almshouses and their upkeep, raising funds and managing finances can be challenging and time-consuming. Most charities are run either solely by a voluntary board of trustees, or by the trustees with the support of a clerk (who may or may not be an employee). Some charities will have paid staff.
- 1.3.2 The purpose of this publication is to provide guidance to trustees of charities who provide almshouse accommodation to enable them to understand their role as trustees as well as to provide the basic standards that should apply and be followed by all charities.
- 1.3.3 In each section checklists are provided to enable trustees to self-audit their respective charities to ensure that basic standards are being met.
- 1.3.4 Not all sections of this publication will apply to all charities. Where appropriate the text indicates which sections are only relevant to certain charities. The sections relevant to a particular almshouse charity will depend upon:
  - (a) the structure of the charity;
  - (b) the size of the charity and the extent to which it employs staff;
  - (c) whether the charity is a Registered Provider of Social Housing ([see section 13](#)); and
  - (d) the extent to which the charity provides regulated care services ([see section 14](#)).
- 1.3.5 Guidance and legislation change on a regular basis. Whilst this publication is maintained and intended to be up to date, it is not always possible to make changes instantaneously. The guidance in this publication is also generic. Charities should therefore always consider whether their particular circumstances require appropriate professional advice to be sought.
- 1.3.6 Whilst The Almshouse Association has taken every care in preparing the material in this publication, any statements made as to the legal or other implications of particular activities are made in good faith and purely for general guidance. The material in this publication cannot be regarded as a substitute for professional advice. The Almshouse Association accepts no liability for any loss or expense incurred as a result of relying in particular circumstances or statements made in this publication.
- 1.3.7 The Almshouse Association is grateful to Tim Rutherford of Stone King LLP for his assistance with the preparation of this publication.





## 2 ALMSHOUSE CHARITIES

### 2.1 What is an almshouse?

2.1.1 The recognised definition of an almshouse is:

*An almshouse is a unit of residential accommodation (usually a house or flat) which belongs to a charity, is provided exclusively to meet the charity's purposes (for example, the relief of financial need or infirmity) and is occupied or is available for occupation under a licence by a qualified beneficiary.*

2.1.2 A charity that provides almshouses is typically a charity for the relief of financial hardship by the provision of housing and associated services or benefits which must (or is authorised to) provide its primary benefit by the grant of a licence to occupy the accommodation that it owns to its beneficiaries.

2.1.3 In addition, a charity that provides almshouses is likely to have one or more of the following features:

- (a) the origin of the charity is a private gift for the relief of poverty;
- (b) the beneficiaries (referred to as the residents) are required to pay a weekly maintenance contribution (or “WMC”) (see [section 9](#)) that must not be set at a level that would cause hardship;
- (c) the nature of the accommodation is such that the licence requires that beneficiaries must show particular consideration for the needs of other residents;
- (d) a significant proportion of the accommodation is “permanent endowment” (see [section 2.3](#));
- (e) the beneficial class or the geographical area from which the beneficiaries can be drawn is restricted.

2.1.4 Charities that provide almshouses do not necessarily have the word “almshouse” in their name; they may be referred to by another title, such as ‘College’, ‘Hospital’ or ‘Homes’. This is due to the historical nature of some almshouses and the contemporary usage of these terms at the time the charity was established.

2.1.5 Most charities that provide almshouses seek to provide accommodation to individuals that will enable them to continue independent living for as long as possible. Some charities may also offer a higher level of care and/or accommodation in their almshouses designed specifically to meet the needs of older people who may have more complex care needs. Further information about the provision of care within in the context of an almshouse setting can be found in [section 14](#).

### 2.2 What is a charity?

2.2.1 Almshouses are normally owned and operated by charities.

2.2.2 A charity is any institution that is established for exclusively charitable purposes (or objects) and which falls within the jurisdiction of the High Court in England and Wales<sup>1</sup>.

2.2.3 A charitable purpose (or object) is a purpose that falls within prescribed purposes<sup>2</sup> and which is for the public benefit.

2.2.4 Charitable purposes (or objects):

- (a) The most likely charitable purposes that will apply to a charity in relation to the provision of almshouse accommodation are:
  - (i) the prevention or relief of poverty; and
  - (ii) the relief of those in need because of youth, age, ill-health, disability, financial hardship or another disadvantage.



- (b) A charity that provides almshouses may have other charitable purposes relating to activities that go beyond the provision of almshouse accommodation, for example the advancement of education or the advancement of religion.
  - (c) The provision of housing or accommodation is not, on its own, a charitable purpose. In order to be charitable, the provision of housing or accommodation must be provided to meet a charitable need. For example:
    - (i) The provision of accommodation to individuals in financial hardship is charitable because it meets the relief of those in need by reason of financial hardship.
    - (ii) The provision of specially adapted accommodation to meet the needs of elderly people would also be charitable (even if the individuals were not in financial hardship) because it would meet the relief of those in need by reason of age.
    - (iii) The provision of accommodation to young families or professionals who are not in financial hardship would not be charitable as it would not be meeting any recognised charitable purpose.
- 2.2.5 An almshouse charity will be established to provide accommodation to meet a particular charitable purpose or purposes which will be set out in the document establishing the charity (often referred to as the charitable “objects” of the charity).
- 2.2.6 Public Benefit:
- (a) A purpose is for the public benefit if:
    - (i) it is beneficial and any detriment or harm that results from the purpose does not outweigh the benefit; and
    - (ii) it benefits the public in general, or a sufficient section of the public and does not give rise to more than incidental private benefit (i.e., benefit to a particular individual).
  - (b) If the charity is established solely for the relief of poverty, then the charity can meet the public benefit requirement by satisfying the “benefit” aspect only and does not need to demonstrate it benefits the public in general, or a sufficient section of the public.
  - (c) Most charities that provide almshouses will, by their very nature, be established to benefit a defined section of the public. For example:
    - (i) Individuals living in a particular area, or over a particular age, or of a particular gender. If the charity’s purposes go beyond the relief of poverty, the public benefit test will be met if those who can benefit from the charity are a sufficient section of the public, which will be the case provided the geographical area is not too narrowly defined.
    - (ii) Individuals who come from a particular occupation or profession. If the charity’s purposes go beyond the relief of poverty, this is generally considered to be a sufficient section of the public, provided that the occupation or profession is not too narrowly defined.
  - (d) The Equality Act 2010 limits the ability to restrict the provision of services by reference to “protected characteristics” and this is explained further in [section 10.3.6](#). In some cases, charities can restrict their beneficial class by reference to the protected characteristics if the restriction is justified.
  - (e) A charity can charge for the services that it provides, but in order to comply with the public benefit test any charges a charity makes for its services or facilities must be of a level that the poor can afford. In this context there is no definition of poor and it depends upon the circumstances, however generally this means that the charges must be no more than something that a person of modest means would find affordable. The charity can charge differently depending upon individuals’ personal means.
  - (f) A charity must follow the Charity Commission’s guidance on public benefit which is issued from time to time and must state in its trustees’ annual report ([see section 8.4](#)) that the trustees have had regard to the guidance.



### 2.2.7 What forms can a charity take?

- (a) Most charities are either:
- (i) established under the terms of trust deed;
  - (ii) established under the terms of a Will;
  - (iii) established under the terms of a conveyance or indenture;
  - (iv) established by means of a Scheme of the Charity Commission or the High Court;
  - (v) incorporated by a Royal Charter;
  - (vi) incorporated as a company limited by guarantee; or
  - (vii) incorporated as a charitable incorporated organisation (i.e., a CIO).
- (b) There are differences between how each form of charity is governed, and these are explained further in [section 3](#).

#### Further resources:



- Charity Commission guidance: [Public benefit: an overview](#)
- Charity Commission guidance: [Public benefit: reporting](#)

## 2.3 What is permanent endowment?

- 2.3.1 The almshouses owned by charities are mostly held by as permanent endowment.
- 2.3.2 The charity's governing document ([see section 3.5](#)) will usually refer to the relevant property as having been "appropriated" to be used as almshouses for the benefit of those individuals who qualify as beneficiaries.
- 2.3.3 This means that the charity holds the property on trust.
- (a) The trusts require the property to be used by the charity solely for the particular purpose of providing almshouse accommodation to the individuals who qualify as beneficiaries of the charity.
- (b) The charity cannot use the property for other purposes and any such use would be in breach of trust.
- 2.3.4 The charity cannot, usually, dispose of the property (which would include leasing the property to a third party) as it must be used for the particular purposes for which it has been appropriated. In particular, unless the trusts on which the property is held provide otherwise, there is no power to grant a tenancy over all or part of the property.
- 2.3.5 Permanent endowment of this nature is usually referred to as "functional permanent endowment" or "designated land" or "specie land".
- 2.3.6 Permanent endowment is normally created by a party gifting or conveying a property to the charity to be held on the terms of the trusts set out in the document transferring the property.
- 2.3.7 In some cases, a charity may be holding property to use as an almshouse that is not permanent endowment. In particular if a property has been purchased from accumulated income or constructed in more recent times by the charity using its' own income or capital (that is not held as permanent endowment) it will probably not be permanent endowment. If there is any doubt as to whether or not a property is held as permanent endowment, or the rights that the charity has to deal with the property if it is permanent endowment, the charity should seek legal advice.
- 2.3.8 The charity may also hold investment funds that are permanent endowment, where they are able to spend the income generated from the permanent endowment but cannot spend the capital. If the charity wishes to spend the capital professional advice should be taken on the potential options that may be available.



### Further resources



- Charity Commission guidance: [Sales leases transfers or mortgages: what trustees need to know about disposing of charity land](#)
- Charity Commission guidance: [Permanent endowment: rules for charities](#)

## 2.4 The Residents

- 2.4.1 The occupants of almshouses are usually referred to as the “residents” and that terminology is used throughout this publication.
- 2.4.2 Residents of an almshouse are in occupation of the almshouses as beneficiaries of the trusts of the charity.
- 2.4.3 Residents of an almshouse are not tenants.
- 2.4.4 A resident must qualify as a beneficiary within the terms of the trusts on which the almshouse property is held in order to be able to occupy the property. A couple wishing to live in the almshouse would both need to qualify individually in order to be eligible to be beneficiaries of the charity.
- 2.4.5 If a resident shall cease to qualify (for example, if financial need is a qualification and they have a substantive change in their fortunes) then they cease to be a beneficiary of the charity and are no longer eligible to occupy the almshouse. In those cases, the resident’s appointment as a beneficiary should be set aside ([see section 11](#)).
- 2.4.6 Quite often residents are required to be in financial hardship in order to qualify as a beneficiary. In determining what is considered appropriate it would normally be considered that a beneficiary was in financial hardship if they were unable to afford to buy or rent an equivalent size dwelling in the local area to that provided by the charity.
- 2.4.7 It is established law that:
- a resident, as a beneficiary of the charity, enjoys the privilege of occupation in the almshouse;
  - there is (in the absence of any express power in the charity’s constitution) no power to grant a tenancy of functional permanent endowment ([see section 2.3](#));
  - the residents occupy the premises under licence (usually evidenced by a Letter of Appointment ([see section 10.15](#)) as a beneficiary of the charity; the licence is not a contractual arrangement, but an appointment further to the terms of the trusts of the charity;
  - the relationship with the resident is that of trustee and beneficiary, not landlord and tenant;
  - the occupation of an almshouse on this basis does not create any form of secure tenancy, the resident is not a tenant; and
  - trustees have a fiduciary duty to permit appropriately qualified individuals to occupy the almshouses.
- 2.4.8 In most cases it will be a requirement that the residents contribute towards the costs of maintaining the almshouse accommodation, this is generally referred to as a “weekly maintenance contribution” or “WMC” ([see section 9](#)). The weekly maintenance contribution is not a rental payment and the amount required should not cause the resident hardship ([see section 9.3](#) for guidance on setting the appropriate level).
- 2.4.9 In most cases residents will be expected to be able to live independently and not require the charity to provide for their care needs. Some charities will offer extra care facilities, but this is a specialist area ([see section 14](#)).



- 2.4.10 Whilst respecting the independence of each resident, trustees and residents extend to each other basic principles of being a good neighbour. In some charities this sense of community is enhanced by communal facilities such as a chapel or a meeting or common room where residents can come together to worship or share a meal or coffee, reducing isolation.
- 2.4.11 Charities that provide almshouses aim to provide support to their residents to enable them to retain their dignity, freedom and independence by living their lives as they see fit within a safe and secure environment. As people are living longer and becoming increasingly frail with fewer “move on” opportunities, the balance between independent living and meeting people’s changing needs is increasingly challenging. The trustees have a duty of care to ensure that residents are able to live independently ([see section 10.11](#)) within the almshouses. Effective planning and regular reviews will enable residents to remain in their homes longer but there may come a time when it becomes impractical to provide the necessary level of support and a resident may need to be asked to arrange to move elsewhere where their needs can be better catered for ([see section 11.3](#)).

**Further resources:**

- The Almshouse Association website: see **Model Independent Living Policy** in [Model Policies and Templates](#)

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**CHECKLIST – ALMSHOUSE CHARITIES**

- ☒ Do all trustees know the definition of an almshouse?
- ☒ Do all trustees understand that the almshouse is operated by a charity?
- ☒ Is the charity established for the public benefit?
- ☒ Have the trustees read and understood the Charity Commission’s guidance on public benefit, and are they aware of their reporting obligations?
- ☒ Do all trustees know what form the charity takes?
- ☒ Does the charity hold property as permanent endowment?
- ☒ Do all of the charity’s residents qualify as beneficiaries of the charity?
- ☒ Are all of the charity’s residents able to live independently?

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**References:**

- <sup>1</sup> Section 1 of the Charities Act 2011.  
<sup>2</sup> These are set out in section 3(1) Charities Act 2011.



## 3 CHARITY STRUCTURES

### 3.1 Introduction

- 3.1.1 Charities which operate almshouses take several different forms. It is important to know which structure the charity has because this will determine:
- (a) the duties of the trustees in relation to the charity;
  - (b) the powers exercisable by the trustees and their ability to delegate tasks;
  - (c) how the assets of the charity are held; and
  - (d) who is responsible for liabilities that may be incurred as a result of the charity's activities.
- 3.1.2 A charity's structure is defined by the way in which the charity was established or incorporated, and this is normally evidenced by the charity's governing document or "constitution". The term "**Governing Document**" is used throughout this publication to refer to the charity's governing document or constitution.
- 3.1.3 The different types of charity structure have different types of Governing Document ([see section 3.5](#)).
- 3.1.4 The way a charity operates will differ depending upon whether it is unincorporated or incorporated as a corporate structure ([see section 3.3](#)).
- 3.1.5 The majority of charities that operate almshouses, having been established hundreds of years ago, will originally have been established as unincorporated structures. A number of such charities have changed their structure to become incorporated charities, but due to the nature of properties used for almshouses being held as a permanent endowment ([see section 2.3](#)), in most cases even if the charity has incorporated as a corporate charity they will still hold their properties used for almshouses on separate unincorporated special trusts, which adds complexity.

### 3.2 How do you know what type of structure a charity is?

- 3.2.1 All charities that either have an annual income over £5,000 or are a CIO must be registered with the Charity Commission.
- 3.2.2 A review of the Charity Commission register entry for the charity will assist in identifying the type of charity it is. Under the "Governance" section of the register entry it provides details of the "organisation type". This will normally indicate that it is either a "charitable company", a "CIO", or "Other". If the charity is classified as "Other" then it will in most cases be an unincorporated charity.
- 3.2.3 If a charity is unincorporated then it is necessary to look at the "Governing Document" section of the register entry, this will set out the details of the governing document or documents that form the charity's Governing Document.
- (a) There may be more than one relevant document if the Governing Document has been amended over the years, as in the case of an unincorporated charity the original governing document remains relevant and has, in most cases, to be read alongside further documents which amend the original underlying governing document. In this publication the term "Governing Document", in this context, means all of the governing documents read together as one document.
  - (b) The types of document that are likely to be shown are:
    - (i) a declaration of trust or trust deed;
    - (ii) the details of an individual's will or details of when it was admitted to probate;
    - (iii) a conveyance or indenture gifting or transferring title to property to be held on trust by the trustees;
    - (iv) a Scheme of the Charity Commission or the High Court; or
    - (v) a Royal Charter<sup>3</sup>.

#### Further resources:



- Charity Commission: [Search the charity register](#)
- Charity Commission guidance: [Charity types: how to choose a structure \(CC22a\)](#)

### 3.3 What are the main differences between an unincorporated and an incorporated charity?

3.3.1 An unincorporated charity does not exist as a legal person in its own right.

- Collectively the trustees of the charity hold the assets jointly on the basis that they have committed to use the assets for the charitable purposes laid out in the Governing Document.
- The trustees are jointly and severally liable for the debts and liabilities incurred when carrying out activities that further the charitable purposes.
- If the trustees properly incur a liability when furthering the charitable purposes, they may be indemnified out of the assets that they are holding for the purposes of the charity. If the assets are insufficient to meet the liability the trustees are liable to make up the shortfall from their own personal assets.
- The trustees will, normally, hold the assets of the charity in their joint names and when trustees change it will be necessary for the ownership of the assets to be updated. This may include the title to property (e.g., the almshouses), investments, bank accounts, gardening equipment and all other assets used in the operation of the almshouses.
- If a contract is entered into in relation to the activities of the charity the contract will be between the contracting third party and all of the trustees of the charity personally. If the trustees change it is then necessary to update the details of any contract to include the new trustees and remove the outgoing trustees.

3.3.2 An incorporated charity (i.e., a company limited by guarantee registered as a charity or a CIO) exists as a legal person in its own right.

- The assets of the charity will be owned by the corporate entity and the charity's Governing Document will provide that the assets may only be used to further charity's charitable purposes as laid out in the Governing Document (and the assets may not be distributed to or shared with the members).
- The charity will be responsible for any debts and liabilities that it incurs.
- The charity has a limited liability structure. If the charity does not have sufficient assets to pay any liabilities that it incurs then the charity will be insolvent. In most (but not all) cases there will be no liability for the trustees or members of the charity to contribute to any shortfall in the charity's debts. (This benefit of limited liability is often seen as a reason for unincorporated charities to restructure as corporate charities.)
- Assets of the charity will be owned by the charity in its' corporate name and there will be no requirement to make any changes in ownership as and when the trustees change.
- If a contract is entered into in relation to the activities of the charity the contract will be between the contracting third party and the charity itself in its' corporate name. No changes will need to be made as and when trustees change.
- An incorporated charity cannot hold permanent endowment outright. The assets of a corporate charity must be freely available to meet the liabilities of the corporate charity on an unrestricted basis. A corporate charity will therefore normally hold permanent endowment on trust as part of a separate trust (i.e., the property held on trust will not be part of the assets of the corporate charity). The corporate charity will be trustee of the separate trust and the details of that trust will be found in a separate constitutional

document. In these cases, the separate trust will often be registered as a “linked charity” on the Charity Commission register.

Summary	Unincorporated	Incorporated
Governing Document	Trust Deed Declaration of Trust Will Conveyance Indenture Scheme Royal Charter	Constitution Articles of Association
Legal Person	No	Yes
Assets	Owned by the trustees and title needs to be updated when trustees change	Owned by the charity
Responsibility for Liabilities	Trustees (but the trustees may be indemnified out of the charity’s assets, if the liability is properly incurred)	Charity
Contracts	Entered into by trustees	Entered into by charity

#### Further resources:



- Charity Commission guidance: [Charity types: how to choose a structure \(CC22a\)](#)

### 3.4 Trustees of unincorporated charities and ownership of assets

3.4.1 Due to the complexities caused by the fact that unincorporated charities do not exist as legal persons, the trustees of some unincorporated charities are able to act as a body corporate. This enables the ownership of assets to be held in the name of the body corporate and for contracts to be entered into in the name of the body corporate. It is not, therefore, necessary to update details as and when trustees change. (This is not the same as the charity having a corporate trustee – [see section 3.4.4.](#))

3.4.2 The trustees can be incorporated to act as a body corporate in several ways:

- If the charity was created by Royal Charter or an Act of Parliament then it is likely that the trustees will have been created as a body corporate or corporation. The governing document will normally state that the trustees are a body corporate, with a seal, and set out the name by which the body corporate is known.
- The trustees may apply to the Charity Commission for a certificate of incorporation<sup>4</sup> which permits the trustees to act as a body corporate. The certificate of incorporation will normally state that the trustees are a body corporate, with a seal, and set out the name by which the body corporate is known. Although able to act as a body corporate the trustees will remain personally liable for the debts and liabilities of the charity as if the body corporate had not been formed.



- 3.4.3 Ownership of land is a common issue for unincorporated charities as upon a change of trustees the ownership details need to be updated at the Land Registry (and if not registered the change of trustees may be a trigger for first registration at the Land Registry). To simplify this issue:
- (a) The land may be vested in the Official Custodian for Charities. The Official Custodian is a corporation created by statute to hold land on behalf of charities<sup>5</sup>. The land is normally vested in the Official Custodian by a court order or by an order of the Charity Commission. The Official Custodian then holds the land for and on behalf of the charity and the trustees retain all responsibility for management of the land. The advantage, however, is that the trustees do not need to update the ownership of the land as and when trustees change.
  - (b) The land may be vested in nominees (either a group of individuals or “holding trustees” or a nominee company that is authorised to act as a trust corporation). The nominees will have entered into a declaration of trust confirming that the land is held by them on behalf of the trustees of the charity. The nominees will normally hold the land on a long-term basis meaning that there is less necessity to update the ownership when individuals change. However, it is important to know who the nominees are and to ensure that appropriate steps are taken to update the nominees as and when appropriate.
- 3.4.4 In some cases, the trustees of an unincorporated charity will form a separate limited company (normally a company limited by guarantee) which will be appointed to be the sole corporate trustee of the charity in place of the individual trustees. The individuals who manage the charity will be the directors of the trustee company, they will not be trustees in their own right. The company itself will be the sole trustee of the charity. This structure provides the individuals who act as the directors of the company (the charity) with the benefit of limited liability and provides continuity of ownership for the assets of the charity which are registered in the name of the corporate trustee. Unless the company is a charity in its own right, it will need to be appointed as the sole corporate trustee by a Charity Commission scheme in order that it acquires trust corporation status, enabling it to be a trustee of land<sup>6</sup>. If this structure is put in place, the charity needs to be careful to make it clear to third parties that the individuals are not “trustees” but are in fact “directors of the trustee”.

#### Further resources:



- Charity Commission guidance: [Incorporation of charity trustees \(CC43\)](#)
- Charity Commission guidance: [The Official Custodian for Charities’ ‘land holding’ service](#)
- Charity Commission guidance: [Appointing nominees and custodians: guidance under s19\(4\) of the Trustee Act 2000](#)

### 3.5 Governing Documents

- 3.5.1 Throughout this publication the term “Governing Document” is used to refer to the charity’s governing document or documents.
- 3.5.2 Although different charitable structures have different types of Governing Document ([see section 3.6](#)), the main provisions found in the Governing Document will be the same.
- 3.5.3 If the charity is incorporated (i.e., as a CIO or a company limited by guarantee) then it is likely that the almshouses will be held by the corporate charity as trustee of a separate unincorporated trust ([see section 3.3.2\(f\)](#)) in which case it will be necessary to review the Governing Document setting out the details of those trusts (which will normally be a trust deed, conveyance or Charity Commission scheme) as well as the Governing Document of the charity itself (i.e., the CIO constitution or the articles of association if the charity is a company limited by guarantee). In particular, the trusts setting out the purposes for which the almshouses can be used ([see section 3.5.5](#)) and the qualifications required by residents ([see section 3.5.6](#)) will be found in the Governing Document for the permanent endowment trusts, and not the Governing Document for the charity itself.
- 3.5.4 Trustees have a duty to be familiar with and act within the relevant sections of their charity’s Governing Document and how these regulate their charity.



### 3.5.5 The Objects:

- (a) The objects of the charity will be set out in the Governing Document ([see section 3.5.3](#)) and they detail the purposes for which the charity is established and the parameters of the activity that the charity can engage in. An almshouse charity will normally have objects setting out that the purposes of the charity are to provide accommodation to a defined set of beneficiaries to meet a particular charitable need (usually relief of financial hardship or relief by reason of age).
- (b) The trustees must be aware of the objects, as applying the assets of the charity for purposes outside of the objects would be a breach of trust, for which the trustees could be personally liable (whatever the structure of the charity).
- (c) The objects may, in addition to the provision of accommodation for charitable purposes, also set out other charitable purposes, for example providing additional services or facilities for the residents or providing relief of need for those residing in the area of benefit who may not be residents (e.g., others living in the same city or town). It is important to know if the charity can support a wider beneficial class than just the residents.
- (d) The objects may well set out a defined area of benefit which determines where those whom the charity can assist are to reside. Quite often areas of benefit will have been defined when the charity was established and may refer to ancient ecclesiastical parishes or local authorities. If, for example, the ecclesiastical parish in which the almshouse is located has changed (perhaps due to a merger with another parish or simply due to changes in the geographical boundaries) that does not mean that the area of benefit for the purposes of the charitable objects will have changed. The area of benefit will remain the geographical area that was established at the time that the charity was created.
- (e) The objects may expressly set out who may be the residents of the almshouses. Alternatively, it may refer to the “residents” which are then defined elsewhere in another section of the Governing Document.
- (f) The trustees should keep under review whether the objects remain appropriate and capable of being fulfilled. For example, an almshouse may have been established to provide for the population in a particular deprived area. Over time, due to demographic changes, the area in question may no longer be deprived, in which case it might be appropriate for the trustees to seek to amend the objects so that they can assist beneficiaries from a different or wider geographical area. ([See section 3.6.3](#) for details of how a charity can amend its Governing Document.)

### 3.5.6 Residents:

- (a) The Governing Document ([see section 3.5.3](#)) will set out the qualifications an individual will need to meet in order to be a resident in the almshouses (i.e., to be a beneficiary of the trusts). This is likely to be either a requirement to be in financial hardship, or a requirement to be over a certain age, or a combination of both. In addition, there may be further restrictions around gender, former occupation of the individual or their spouse, religious beliefs and/or a requirement to come from a particular geographical area.
- (b) The trustees must ensure that residents are chosen who meet the criteria set out in the Governing Document. As the individuals are provided with accommodation as a beneficiary of the charity, if the trustees provide accommodation to an individual who is not qualified, they will be acting in breach of trust and can be personally liable.

**How to determine whether or not a resident is “poor” or in financial hardship?**

Whether or not a resident is “poor” or in financial hardship is not confined to those who are destitute and “poor” is considered to be a relative term.

In most cases the trustees can form a view of an individual’s financial standing by considering whether or not they would have the ability to buy or rent suitably modified accommodation for themselves within the area served by the almshouse. If the individual would not be able to do this then they are likely to be considered to be in financial hardship.



Trustees do of course have a duty to consider who is in most need when determining applications.

**What is meant by elderly?**

In relation to deciding what is meant by “elderly”, again in the absence of any exact age qualification being stated in the governing document it is a matter for the trustees to consider what is appropriate in the circumstances.

**Can the charity provide accommodation to an individual who does not meet the criteria?**

No, unless the Governing Document permits this.

In some cases, the Governing Document may state that in “exceptional circumstances” the trustees may provide accommodation to an individual who does not meet all of the criteria, but the individual would still need to meet the qualification for the underlying charitable purpose.

For example, if the objects of the charity are the provision of accommodation to meet financial hardship of those aged 55 or over, then it might be acceptable in exceptional circumstances (if the Governing Document permits this) to provide accommodation to someone under 55 who was still in financial hardship. It would not be appropriate to provide accommodation to someone aged under 55 who was not in financial hardship.

In some cases, there may also be an additional requirement to get the Charity Commission’s consent to the exceptional circumstances.

- (c) A charity is permitted to define who can be a beneficiary by reference to gender, race, ethnic origin, religion or sexual orientation. Whilst legislation<sup>7</sup> makes it unlawful to discriminate against individuals who share certain “protected characteristics” of this nature, there is an exemption for charities. A charity can restrict its support to people by reference to a protected characteristic if:

- (i) the charity’s Governing Document permits this; and
- (ii) the restriction is justified either to tackle a particular disadvantage faced by the particular group of individuals or to achieve some other proportionate aim.

This is explored further in [section 10.3.6](#) in particular in relation to making resident appointments. If the charity has concerns that the objects of the charity are potentially discriminatory and this cannot be justified, specialist advice should be sought.

- (d) The Governing Document will also make provisions about the basis on which the residents occupy the almshouse accommodation. These conditions need to be observed and should be included in the resident’s appointment letter ([see section 10.15](#)). In any event, the provisions of the Governing Document take precedence over any terms set out in an appointment letter ([see section 10.15](#)) or Residents’ Handbook ([see section 10.16](#)). In particular the Governing Document may provide (amongst other things):

- (i) the extent to which the residents are required to make a financial contribution towards the costs to the charity of providing the accommodation;
- (ii) that residents are not allowed to be absent from the accommodation for more than a certain number of days in a row or during a year, without the consent of the trustees or the charity’s “Warden” or other officer (if there is one);
- (iii) that residents are not allowed to have guests in their rooms overnight; and
- (iv) the conditions on which a resident’s appointment can be set aside by the trustees.



- (e) The Governing Document will also set out the process to be followed by the charity in advertising vacancies and taking steps to appoint new beneficiaries to fill any vacancy ([see section 10.5](#)).

#### 3.5.7 Application of income and capital:

- (a) The Governing Document will normally provide that the income of the charity is to be used toward maintaining, refurbishing and running the almshouses as well as providing for the benefit of the residents.
- (b) The Governing Document may provide that if there is surplus income over and above that needed to operate the almshouses, that the income may be spent in other ways for example furthering other charitable purposes set out in the Governing Document.
- (c) If the charity is unincorporated then the Governing Document will make clear whether the charity can spend capital as well as income, or whether it can only spend income. In most almshouse charities it is common for the trustees to have the power to spend income, but less common for them to have the power to spend capital (in particular capital in the form of the almshouses which are generally found to be permanent endowment ([see section 2.3](#)). If the charity is a corporate structure then it will have the power to spend both capital and income, however the trustees would still need to check that the capital is not held by the corporate charity as trustee on separate trusts (e.g. if the capital in question is permanent endowment which must be held by the corporate charity as trustee) ([see section 3.5.3](#)).
- (d) The Governing Document may provide that certain amounts of income have to be paid to third parties. This is often the case when the charity has amalgamated or merged with other small charities over the years. For example, there may be a requirement to pay a sum of income each year to the local vicar to hold a service for the residents on a particular day of the year, or for maintenance of the local church. Even though the sums provided for may be small or refer to outdated terminology (e.g., five shillings a year), if the obligation remains in the Governing Document, the trustees must continue to make the payment. A failure to pay such sums would be a breach of trust for which the trustees would be personally liable. In addition, the trustees cannot simply agree with the current beneficiary of the payment to pay a capital sum to discharge the obligation. The obligation can only be terminated by amending the Governing Document (which normally requires the involvement of the Charity Commission) ([see section 3.6.3](#)).

#### 3.5.8 Appointment (and removal) of trustees:

- (a) The Governing Document will set out detailed provisions about who the trustees of charity should be and how they will be chosen and appointed.
- (b) In particular:
  - (i) the Governing Document may permit a third party (such as a local authority or council or officeholder like a bishop) to appoint one or more trustees of the charity
  - (ii) certain individuals may be entitled to be trustees by reason of their holding a particular office (e.g., the Vicar of the parish in which the almshouse is located), these are referred to as “ex-officio” appointments;
  - (iii) all other trustees will usually be appointed by the other trustees in post at the time of the appointment. However, occasionally, there may be a wider group of individuals who are involved in the appointment, such as the individuals who live in a certain village or location.
- (c) The Governing Document will identify how the trustee appointment needs to be carried out. In most cases this can be by means of a resolution passed at a meeting of the trustees. Occasionally this will require a “special” meeting with specific notice provisions that may differ to those for an ordinary meeting. In some unincorporated charities it may still be necessary to have a deed of appointment and retirement of the trusts as and when trustees change, and this should be checked. The Charity Commission should be notified of any changes by updating the register entry for the charity.



- (d) The Governing Document may set out particular terms of office, for example stating that a trustee only serves for three years, following which they may be eligible for reappointment for a certain number of terms. If a trustee continues in post after the date on which their appointment comes to an end, without being reappointed, their trusteeship will have automatically come to an end and no longer be valid.
- (e) The Governing Document may also set out certain circumstances in which an individual will cease to be a trustee or can be removed as a trustee. In an unincorporated charity if there is no express power to remove a trustee then the only option is likely to be an application to court.
- (f) When an individual is appointed as a trustee of the charity it is appropriate to ask them to sign a declaration of eligibility and responsibility in the Charity Commission approved format.

3.5.9 Management of the charity and, in particular, trustees' decision making:

- (a) The Governing Document will set out the trustees' basis for managing the charity on a day-to-day basis.
- (b) It will often provide the minimum number of meetings that trustees may hold in a year and how such meetings are to be held, on what notice and in what manner.
- (c) In relation to decision making, the Governing Document will:
  - (i) provide the number of trustees that need to be present at a meeting in order for the meeting to be quorate. Any decisions passed at a meeting that is not quorate will not be effective;
  - (ii) provide whether decisions need to be by majority or unanimous;
  - (iii) set out whether the trustees have the ability to have meetings virtually or in hybrid form. In the absence of any specific provision to have virtual meetings the trustees will only be able to have a virtual meeting if all those taking part can see and hear each other (i.e., a telephone conference call would not be permitted);
  - (iv) set out whether the trustees can make decisions outside of a meeting, for example by email or in writing. In the absence of any such provision then decisions would have to be taken at a meeting unless there was unanimous agreement between the trustees to proceed in a particular manner; and
  - (v) the Governing Document will also set out the extent to which the trustees can delegate the implementation of their decisions or day-to-day management of the charity to committees or a particular individual (e.g., a "Clerk" or "Warden") and on what terms.

3.5.10 Powers and, in particular, powers (if any) in relation to land:

- (a) In a corporate charity the trustees will exercise the charity's powers on behalf of the company or CIO. In most cases the charity will have power to do anything that it needs to do in order to further its charitable purposes<sup>8</sup>.
- (b) In an unincorporated charity the trustees exercise the powers in their own right. However, the trustees can only carry out activities if they have the particular power that permits them to do to this. For example, the trustees can only borrow money if they have an express power in the Governing Document to borrow. The governing document will usually set out comprehensive powers that will give the trustees the ability to do everything they need to be able to do. If the Governing Document does not contain the necessary power the trustees will need to amend the Governing Document (see section 3.6.3).
- (c) It is likely that the charity's property is held as permanent endowment (see section 2.3). If the trustees want to dispose of any part of the permanent endowment property, then they would need to consider carefully whether they had any power to do this under the Governing Document. The granting of a tenancy (as opposed to appointment of a beneficiary as a resident) to a third party would be a disposal of land and the trustees would need a specific power in the Governing Document to enable them to enter into such a tenancy.

### 3.5.11 Dissolution of the Charity:

The Governing Document may provide what would happen to the assets of the charity were a decision taken to dissolve the charity.

#### Further resources:



- Charity Commission guidance: [Charitable purposes](#)
- Charity Commission guidance: [The essential trustee: what you need to know, what you need to do \(CC3\)](#)
- Charity Commission form: [Charity trustee: declaration of eligibility and responsibility](#)
- Charity Commission guidance: [It's your decision: charity trustees and decision making](#)

## 3.6 Charity Structures

3.6.1 It is important to know what type of structure the charity is ([see section 3.2](#)).

3.6.2 There follows a summary of the relevant provisions for each structure.

Unincorporated charity	
Governing Document	<p>Includes, but is not limited to, any of the following:</p> <ul style="list-style-type: none"> <li>• Trust Deed</li> <li>• Declaration of Trust</li> <li>• Deed of Variation</li> <li>• Conveyance</li> <li>• Indenture</li> <li>• Will</li> <li>• Deed of Gift</li> <li>• Charity Commission Scheme</li> <li>• Scheme of the High Court</li> <li>• Resolution of the Trustees further to section 280 Charities Act 2011 and predecessor legislation</li> <li>• Resolution of the Trustees further to section 280A Charities Act 2011</li> </ul> <p>If the original Governing Document has been amended, the document making the amendments does not normally replace the original Governing Document. It is therefore necessary to read the original governing document and all subsequent amendments as a set, to see the changes to the Governing Document. In some, limited, cases a new Scheme may have been made by the Charity Commission that replaces all of the previous governing documents and it becomes the new Governing Document.</p> <p>If when the trustees change deeds of appointment and retirement are prepared (which may be required depending upon the appointment provisions in the Governing Document) these deeds of appointment and retirement should be viewed as part of the</p>



	Governing Document of the charity. It is essentially these documents which empower the trustees upon appointment to act as trustees.
How to obtain Governing Documents	The original Governing Document should be held by the charity. If, for any reason, the charity does not have a copy then electronic copies can be obtained from the Charity Commission by using the online enquiry form. However, the original documents may be required from time to time for third parties (e.g., banks etc.) so should be located.
Charity trustees	The charity trustees will be referred to as the Trustees, but may be referred to by other titles such as Governors, Feoffes, Custos, Council, etc.
Membership	It is unlikely that an unincorporated charity will have a membership but, occasionally, there may be members (such as inhabitants of the local parish) who have a right to appoint trustees.
Contracts	<p>The charity has to enter into contracts (e.g., employment contracts, building maintenance contracts etc.) in the names of all the individual trustees for the time being. In some cases, the trustees will have been granted a certificate of incorporation by the Charity Commission (<a href="#">see section 3.4.2(b)</a>) and may act as a body corporate, in a corporate name, for the purposes of entering into contracts.</p> <p>When trustees change contracts need to be updated to pass the benefits and contractual liabilities to the new trustees.</p>
Litigation	The charity has to sue or be sued in the names of the individual trustees.
Land ownership	<p>The charity has to own land in the names of the individual trustees, which needs to be updated each time that the individual trustees change.</p> <p>If the trustees have a certificate of incorporation the land will be owned in the name of the body corporate created by the certificate of incorporation (<a href="#">see section 3.4.2(b)</a>).</p> <p>Alternatively, some charities will use the Official Custodian for Charities' land holding service (<a href="#">see section 3.4.3(a)</a>). In these cases, the title to the property will be held in the name of the Official Custodian for Charities and there is no need to make changes when trustees change.</p>





Almshouse ownership	The trustees will normally own the almshouses in the same way as any other land, but the almshouses will normally have been appropriated to be used for the purposes of the charity. This means that the almshouses would be functional permanent endowment or designated land ( <a href="#">see section 2.3</a> ).
Liability	<p>The trustees will have unlimited personal liability for the debts and liabilities of the charity, but:</p> <p>The charity should be insured for most liabilities; and</p> <p>the trustees are entitled to be indemnified out of the assets of the charity (provided the debts and liabilities were properly incurred), but will remain liable for any shortfall.</p>
Amendments to Governing Documents	<p>If the amendment is purely administrative, then the trustees may pass a resolution of not less than 75% of the Trustees (assuming the charity has no separate membership) under section 280A Charities Act 2011 to amend the Governing Document, which is then filed at the Charity Commission.</p> <p>If the amendment falls into the following categories then the prior consent of the Charity Commission is needed before a resolution can be passed under section 280A Charities Act 2011:</p> <ul style="list-style-type: none"><li>• altering the purposes of the charity;</li><li>• altering the application of the property of the charity if it is dissolved;</li><li>• providing authorisation for benefits to be obtained by the trustees of persons connected with them;</li><li>• altering the restrictions relating to permanent endowment;</li><li>• altering a section that requires the consent of any third party (unless they have given consent or no longer exist); or</li><li>• altering the rights of any individual or office holder named in the governing document (for example, ex-officio or nominated trustee positions) (unless they have given consent or no longer exist).</li></ul>
Registered Provider of Social Housing	If the charity is also a Registered Provider of Social Housing then the Regulator may also need to be informed / consulted on any amendments to the Governing Document.





Company Limited by Guarantee that is registered as a charity	
Governing Document	<p>Articles of Association.</p> <p>If the company was incorporated prior to the Companies Act 2006, then the company will have a Memorandum and Articles of Association. Since 2006 any provisions found in the Memorandum must be read as if they were contained in the Articles of Association<sup>9</sup>, as one document.</p>
How to obtain Governing Documents	<p>Copies of the Articles of Association can be downloaded from Companies House. (If the articles were last amended pre-2006 then it will be necessary to download the most recent Memorandum as well as the articles.)</p>
Charity trustees	<p>The charity trustees are the directors of the company. They may be referred to in the Articles as “trustees” but for company law purposes they are the directors.</p>
Membership	<p>The company will have directors / trustees and members. In most almshouse companies the members will be the same individuals as the directors (this is known as a “flat” governance structure).</p>
Contracts	<p>The company will enter into contracts in the corporate name of the company.</p>
Litigation	<p>The company will sue or be sued in the corporate name of the company.</p>
Land ownership	<p>The company will own land in the corporate name of the company.</p>
Almshouse ownership	<p>A company cannot hold permanent endowment as part of the corporate assets of the company (see section 2.3). If the almshouses are permanent endowment, then they will be held by the company as trustee of a separate trust (with a separate Governing Document), and will not therefore form part of the company’s assets. The trust is likely to be recorded on the Charity Commission register as a linked charity.</p>
Liability	<p>As claims will be against the company, the members of the company have the benefit of limited liability (i.e., if the claim exceeds the assets of the company in most cases there is no further claim against the membership or directors). In some circumstances the directors may be personally liable, for example if the company has been trading whilst insolvent.</p>



Amendments to Governing Documents	<p>The directors may propose amendments to the Articles, which will require a 75% majority vote of the members to be effective.</p> <p>The prior consent of the Charity Commission is needed<sup>10</sup> to any amendment that will:</p> <ul style="list-style-type: none"><li>• amend the objects of the charity;</li><li>• alter the dissolution provisions directing the application of the company's property on dissolution; or</li><li>• provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.</li></ul> <p>Following amendment, a complete updated copy of the Articles has to be filed with Companies House and the Charity Commission.</p>
Amendments to the Governing Document of any permanent endowment trusts	See unincorporated charities table above.
Amendments to Governing Documents if the company is a corporate trustee, but not registered as a charity in its own right	<p>The directors may propose amendments to the Articles, which will require a 75% majority vote of the members to be effective.</p> <p>Following amendment, a complete updated copy of the Articles has to be filed with Companies House. There is no requirement to file the amended Articles with the Charity Commission if the company is not registered as a charity in its own right.</p>
Registered Provider of Social Housing	If the charity is also a Registered Provider of Social Housing then the Regulator may also need to be informed / consulted on any amendments to the Governing Document.

Charitable Incorporated Organisation	
Governing Document	Constitution
How to obtain Governing Documents	<p>The Constitution will have been filed electronically with the Charity Commission when the CIO was incorporated, and the CIO should have a copy on file. If not, the CIO can obtain a copy from the Charity Commission. (There is no "original" signed copy of the Constitution.)</p>
Charity trustees	The charity trustees.
Membership	<p>The CIO will have a membership.</p> <p>If the CIO is a Foundation CIO then the charity trustees will be the only members of the CIO.</p> <p>If the CIO is an Association CIO then the members will not be the same individuals as the</p>



	charity trustees (but may include some or all of the charity trustees).
Contracts	The CIO will enter into contracts in the corporate name of the CIO.
Litigation	The CIO will sue or be sued in the corporate name of the CIO.
Land ownership	The CIO will own land in the corporate name of the CIO.
Almshouse ownership	<p>A CIO cannot hold permanent endowment as part of the corporate assets of the CIO. If the almshouses are permanent endowment then they will be held by the CIO as trustee of a separate trust (with a separate Governing Document), and will not therefore form part of the CIO's assets (<a href="#">see section 2.3</a>).</p> <p>The separate trust may be shown as a linked charity on the Charity Commission register.</p> <p>However, if the trusteeship of the almshouses were transferred to the CIO by means of a vesting declaration<sup>11</sup> then the almshouse trusts and the CIO will be treated as a single charity for the purposes of registration, reporting and accounting. Notwithstanding this fact, the almshouses are still held by the CIO as trustee and on the terms of the trusts as set out in the separate Governing Document for the trust.</p>
Liability	<p>As claims will be against the CIO, the members of the CIO have the benefit of limited liability (i.e., if the claim exceeds the assets of the CIO in most cases there is no further claim against the membership).</p> <p>In some circumstances the trustees may be personally liable, for example if the CIO has been trading whilst insolvent.</p>
Amendments to Governing Documents	<p>The trustees may propose amendments to the Constitution, which will require a 75% majority vote of the members to be effective.</p> <p>The prior consent of the Charity Commission is needed<sup>12</sup> to any amendment that will:</p> <ul style="list-style-type: none"><li>• amend the objects of the charity;</li><li>• alter the dissolution provisions directing the application of the CIO's property on dissolution; or</li><li>• provide authorisation for any benefit to be obtained by the charity trustees or members of the CIO or persons connected with them.</li></ul>



	Following amendment, a complete updated copy of the Constitution has to be filed with the Charity Commission.
Amendments to the Governing Document of any permanent endowment trusts	See unincorporated charities table above.
Registered Provider of Social Housing	If the charity is also a Registered Provider of Social Housing then the Regulator may also need to be informed / consulted on any amendments to the Governing Document.

### 3.6.3 The process for amending Governing Documents

Summary of process to amend a Governing Document	
<p><b>Unincorporated charity:</b></p> <ol style="list-style-type: none"> <li>(1) Check if the Governing Document contains a power of amendment, in which case the process in the Governing Document must be followed.</li> <li>(2) If the Governing Document does not contain a power of amendment and the amendment is purely administrative (i.e., not amending the trust provisions of the Governing Document, but powers and administrative provisions), the trustees should pass a resolution in accordance with section 280A of the Charities Act 2011, and then file the resolution with the Charity Commission.</li> <li>(3) If the Governing Document does not contain a power of amendment or the power of amendment only permits administrative amendments, and the amendment falls within the list of amendments that require Charity Commission consent (as detailed in section 3.6.2 above), the consent of the Charity Commission must be obtained before a resolution is passed under section 280A Charities Act 2011.</li> <li>(4) If the charity is a Registered Provider of Social Housing, notify the Regulator of the change.</li> </ol>	
<p><b>Company limited by guarantee registered as a charity:</b></p> <ol style="list-style-type: none"> <li>(1) Is the charity seeking to amend the trusts on which permanent endowment property is held, in which case the charity should proceed as in the case of an unincorporated charity (see above).</li> <li>(2) Check whether the articles set out any conditions that need to be followed before the articles can be amended.</li> <li>(3) Is the intended amendment a regulated amendment (alteration to objects, alteration to dissolution provisions, or authorisation of a trustee benefit), in which case the charity should first obtain consent from the Charity Commission under section 198 of the Charities Act 2011 to the proposed changes?</li> <li>(4) The trustees propose the amendments to the members of the company (which are likely to be the same individuals as the trustees).</li> <li>(5) The members of the company pass a special resolution (i.e., a 75% majority) either by written resolution or at a general meeting of the members, to amend the articles.</li> <li>(6) The special resolution and a copy of the amended articles are filed at Companies House. It will also be necessary to file copies of Companies House Forms CC03 and CC04 if a change has been made to the objects of the charity. (If the charity has changed its name additional documents will be required.)</li> <li>(7) The special resolution is filed at the Charity Commission.</li> </ol>	

(8) If the charity is a Registered Provider of Social Housing, notify the Regulator of the change.
<p><b>Company limited by guarantee not registered as a charity (i.e., acting as a corporate trustee)</b></p> <p>(1) Is the charity seeking to amend the trusts on which permanent endowment property is held? If so, the charity should proceed as in the case of an unincorporated charity (see above).</p> <p>(2) Check whether the articles set out any conditions that need to be followed before the articles can be amended?</p> <p>(3) The directors propose the amendments to the members of the company (which are likely to be the same individuals as the trustees).</p> <p>(4) The members of the company pass a special resolution (i.e., a 75% majority) either by written resolution or at a general meeting of the members, to amend the articles.</p> <p>(5) The special resolution and a copy of the amended articles are filed at Companies House.</p> <p>(6) If the charity is a Registered Provider of Social Housing, notify the Regulator of the change.</p>
<p><b>Charitable Incorporated Organisation:</b></p> <p>(1) Is the charity seeking to amend the trusts on which permanent endowment property is held? If so, the charity should proceed as in the case of an unincorporated charity (see above).</p> <p>(2) Check whether the Constitution sets out any conditions that need to be followed before the Constitution can be amended.</p> <p>(3) Is the intended amendment a regulated amendment (alteration to objects, alteration to dissolution provisions, or authorisation of a trustee benefit), in which case the charity should first obtain consent from the Charity Commission under section 226 of the Charities Act 2011 to the proposed changes?</p> <p>(4) The trustees propose the amendments to the members of the CIO (which are likely to be the same individuals as the trustees).</p> <p>(5) The members of the CIO pass a resolution either unanimously by written resolution or by a 75% majority at a general meeting of the members, to amend the Constitution.</p> <p>(6) The and a copy of the amended constitution are filed at the Charity Commission.</p> <p>(7) If the charity is a Registered Provider of Social Housing, notify the Regulator of the change.</p>

#### Further resources:



- Charity Commission guidance: [How to make changes to your charity's governing document](#)
- Regulator of Social Housing guidance: [Notification of restructures and constitutional changes](#)
- Regulator of Social Housing guidance: [Restructures and constitutional changes](#)

### 3.7 Change of charity structure to a corporate structure

- 3.7.1 If a charity is constituted as an unincorporated charity, it is possible to establish a new incorporated charity to take over the activities of the unincorporated charity, so as to provide the advantages of being an incorporated charity. This is often referred to as an “incorporation” of the unincorporated charity, but technically involves the creation of a new charity to replace the existing charity. This process is achieved by:



- (a) Incorporating and registering a new charity either as a company limited by guarantee or as a CIO.
  - (b) Transferring all the assets (excluding permanent endowment – [see section 2.3](#)) to the corporate charity, in return for the corporate charity agreeing to take on all of the liabilities of the trustees. The transfer process can be complicated and it is necessary to engage with third parties such as grant funders, investment managers, banks, employees and suppliers. In particular, if the charity has in the past benefited from housing grant it is possible that the transfer of assets may trigger repayment of the housing grant and negotiations will have to be held with the Regulator and/or Homes England to resolve this issue.
  - (c) Appointing the corporate charity as the sole corporate trustee of the permanent endowment trusts, following which the trusts will be linked to the new corporate charity for reporting and accounting purposes and may, in some circumstances, be treated as a single charity for registration, reporting and accounting purposes.
  - (d) If the charity is a Registered Provider of Social Housing the new corporate charity will need to apply to register as a Registered Provider of Social Housing and there is no transfer of the registration.
- 3.7.2 A charity that is established as a company limited by guarantee may convert to become a CIO following a statutory process<sup>13</sup>.
- 3.7.3 If a conversion is not carried out correctly it can have unintended consequences and therefore before considering a conversion trustees are advised to consult with the Charity Commission, The Almshouse Association and/or their professional advisors for guidance.
- 3.7.4 Post conversion the CIO or company limited by guarantee will hold the almshouses on the terms of the trusts as set out in the original charity's Governing Document (not on the terms of the CIO or company limited by guarantee's Governing Document).
- 3.7.5 Alternatively, rather than incorporating the charity itself, the same benefits of incorporation can be achieved by creating a corporate trustee (using a company limited by guarantee) (as discussed above in section 3.4.4). In some cases, where all of the assets of the charity are held as permanent endowment (i.e., both the almshouses and any investments), this may be a more appropriate light-touch option than a "full" incorporation as there would otherwise not be anything to transfer to the corporate charity which would simply hold all of the assets on the terms of the original trusts. The process involves:
- (a) incorporating a company limited by guarantee at Companies House
  - (b) applying for a Scheme from the Charity Commission to appoint the charity as the sole corporate trustee of the charity (this is needed so that the company has trust corporation status enabling it to act as a trustee of land).
  - (c) passing an appropriate resolution under section 280A Charities Act 2011 to amend the governing document to change the references to "trustees" to "trustee" and to remove the provisions relating to meetings and passing of resolutions etc. (as these will now be governed by the articles of association of the corporate trustee).
  - (d) updating the Charity Commission register to show the sole corporate trustee as the only trustee of the charity.
  - (e) transferring the ownership of the charity's assets from the previous trustees into the name of the sole corporate trustee (e.g., the title to any properties as the ownership of any investments).
  - (f) If the charity is a Registered Social Provider it will need to notify the Regulator of the change in its structure.



**Further resources:**



- Charity Commission guidance: [Change your charity structure](#)
- Charity Commission guidance: [How to transfer charity assets](#)
- Regulator of Social Housing guidance: [Notification of restructures and constitutional changes](#)
- Regulator of Social Housing guidance: [Restructures and constitutional change](#)
- Charity Commission guidance: [How to merge charities](#)



## CHECKLIST – ALMSHOUSE CHARITIES

### Structure:

- ☒ Do all the trustees know whether the charity is unincorporated or incorporated?

### Unincorporated charities:

- ☒ If the charity is unincorporated, are all assets held in the names of the current trustees?
- ☒ If the charity is unincorporated, are all contracts entered into in the names of the current trustees?
- ☒ Do all the trustees know which documents form the charity's Governing Document?
- ☒ Do all the trustees have a copy of the documents which form the charity's Governing Document?
- ☒ Are any of the charity's assets held in the name of a third party or the Official Custodian for Charities?
- ☒ Does the charity have a corporate trustee and, if so, do the trustees have a copy of the corporate trustee's Governing Document?

### Incorporated charities:

- ☒ Does the charity hold property (e.g., the almshouses) on separate trusts as permanent endowment?
- ☒ Do all the trustees know which documents from the Governing Document of the permanent endowment trusts and do they have a copy of such documents?
- ☒ Do all the trustees have a copy of the latest Governing Document?

### The Governing Document:

- ☒ What are the objects of the charity?
- ☒ How does an individual qualify to be a resident in the almshouses? Is this the same for all the almshouses, or are there different criteria for different almshouses?
- ☒ Do all beneficiaries qualify under the provisions of the Governing Document?
- ☒ Do any couples reside in the almshouses and, if so, do both individuals qualify under the provisions of the Governing Document?
- ☒ Are there any restrictions on spending the capital investments of the charity?
- ☒ Does the Governing Document require any payments to be made to third parties and, if so, are these payments being made correctly?
- ☒ Are any of the trustees appointed ex-officio?
- ☒ Have all trustees been properly appointed in accordance with the Governing Document and their details recorded at the Charity Commission?
- ☒ Have all trustees been asked to sign a declaration of eligibility and responsibility?
- ☒ Have any trustees remained in post after the expiry of their term in office?
- ☒ How many trustees must be present at a meeting for it to be quorate?
- ☒ Does the Governing Document permit virtual or hybrid meetings?
- ☒ Does the Governing Document permit trustees to make decisions outside of meetings and/or by email?
- ☒ Have any amendments been made to the Governing Document and, if so, was the correct process followed?





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**References:**

- <sup>3</sup> A charity established by Royal Charter may be a body corporate, or it may just be the trustees that are a body corporate, depending upon the terms of the charter. Due to the complexities of Royal Charter charities, which are beyond the scope of this publication, specialist advice should be sought in relation to any queries.
- <sup>4</sup> This will be made under Part 12 of the Charities Act 2011 but if made in the past may refer to previous Charities Acts or the Charitable Trustees Incorporated Act 1872.
- <sup>5</sup> Prior to 1992 this was referred to as the Official Custodian for Land and Charitable Investments, but the service no longer deals with investments and is confined to land interests.
- <sup>6</sup> Paragraph 3 of Schedule 7 of the Charities Act 2011.
- <sup>7</sup> Equality Act 2010.
- <sup>8</sup> Section 216 of the Charities Act 2011.
- <sup>9</sup> Section 28 of the Companies Act 2006.
- <sup>10</sup> Section 198 of the Charities Act 2011.
- <sup>11</sup> Further to section 61 of the Charitable Incorporated Organisations (General) Regulations 2012.
- <sup>12</sup> Section 226 of the Charities Act 2011.
- <sup>13</sup> Section 228 of the Charities Act 2011 and The Charitable Incorporated Organisations (Conversion) Regulations 2017.



## 4 TRUSTEES

### 4.1 What is a trustee?

- 4.1.1 Trustees are the individuals who are responsible, accountable and liable for the actions of their charity.
- 4.1.2 The charity's Governing Document will set out who the trustees of the charity are and how they are appointed ([see section 3.5.8](#)). Essentially the trustees are the individuals who are controlling the management and administration of the charity<sup>14</sup>.
- 4.1.3 Trustees may be referred to by a variety of titles: trustee, governor, custos, management committee, council, executive council, Feoffes, members of the corporation etc.
- 4.1.4 The charity's trustees serve on the charity's governing body and are responsible for everything that happens in the charity including control of the finance and administration. The trustees' overall role is to govern the charity, ensuring it operates effectively and efficiently in accordance with its charitable objects, remains financially viable and provides a high standard of accommodation for those in need.
- 4.1.5 All trustees, however appointed, whether nominated by a third party or otherwise, have the same legal duties, rights and responsibilities towards the charity and its beneficiaries.

### 4.2 Who is eligible to be a trustee?

- 4.2.1 Trustees of:
  - (a) unincorporated charities must be at least 18;
  - (b) a company limited by guarantee or a CIO must be at least 16 (unless the Governing Document provide for a higher minimum age).
- 4.2.2 There is no upper age limit for trustees. Provided an individual has the appropriate mental capacity and commitment to continue serving on the governing body, age should not be a factor.
- 4.2.3 An individual must not act as a trustee (or in certain senior management positions such as Chief Executive or Chief Finance Officer or equivalent within the charity) if they have been disqualified<sup>15</sup>, unless they have been granted a waiver from disqualification from the Charity Commission<sup>16</sup>.
- 4.2.4 The automatic grounds for disqualification include:
  - (a) unspent convictions for specific offences including, but not limited to offences involving dishonesty or deception, terrorism or money laundering;
  - (b) being on the sex offenders register;
  - (c) disobeying a Charity Commission Order;
  - (d) being a designated person (under specific anti-terrorist legislation);
  - (e) having been removed from a relevant office by an Order of the Charity Commission or the courts;
  - (f) having been disqualified from acting as a company director (even if the relevant charity is not a company);
  - (g) being an undischarged bankrupt or subject to insolvency restrictions.
- 4.2.5 If the charity intends to claim charity tax reliefs and exemptions, the charity must ensure that all trustees are "fit and proper persons" so that they meet the management conditions for HMRC's purposes<sup>17</sup>.
- 4.2.6 If the charity provides any form of regulated activity ([see section 14](#)) for adults then, depending upon the role played by the trustees, it may be necessary for DBS checks to be carried out for safeguarding purposes ([see section 5.2.6\(c\)](#)).
- 4.2.7 Before appointing an individual as a trustee, the individual should be asked to complete a declaration form confirming that they are not subject to any form of disqualification, and the completed form should be maintained with the charity's records.

**Further resources:**

- Charity Commission guidance: [The essential trustee: what you need to know, what you need to do \(CC3\)](#)
- Charity Commission guidance: [Automatic disqualification rules for charity trustees and senior positions](#)
- Charity Commission guidance: [Automatic disqualification: Waiver decision process and appeals](#)
- HMRC guidance: [Guidance on the fit and proper persons test](#)
- Charity Commission form: [Charity trustee; declaration of eligibility and responsibility](#)

**4.3 How do you recruit, select and appoint trustees?**

- 4.3.1 Charities should have a suitably skilled and experienced governing body appropriate to their aims and work. Professional knowledge and expertise in areas such as law, finance, social care and property management can be beneficial additions to the trustee board, as are soft skills and experience of dealing with people. Knowledge of the charity's area of benefit, where this is defined, is also an advantage.
- 4.3.2 The charity should recruit new trustees from a diverse background with the skills and experience to complement existing trustees to create a board with the knowledge to respond to the wide range of issues that might arise. Some charities may experience difficulties in recruiting new trustees and they may need to approach local businesses or professionals, advertise in parish magazines and local papers, and contact Rotary or Lions Clubs. Further information on trustee recruitment can be obtained from the National Council for Voluntary Organisations ("NCVO"), The Almshouse Association and the Charity Commission.
- 4.3.3 Whilst The Almshouse Association would not recommend this (due to the potential conflicts of interest) some charities may consider it beneficial to have a representative of the residents on the trustee board. However, such appointments should be considered carefully and it will be necessary to ensure that the Governing Document permits a beneficiary to be a trustee and that conflicts of interest are managed appropriately.
- 4.3.4 An annual skills audit to identify strengths and weakness of the board helps with succession planning and the development of training needs. Some larger almshouse charities have also introduced appraisals which provide the opportunity for trustees to express their view on the effectiveness of the charity and their individual contribution.
- 4.3.5 How trustees are appointed will be set out in the charity's Governing Document (see section 3.5.8). This will normally specify:
- the method by which trustees are appointed;
  - who makes the appointment;
  - when the appointment should be made;
  - how long the appointment will last, and whether trustees can be reappointed and, if so, how many times;
  - whether there are any particular requirements to be a trustee (for example age, gender or faith requirements).
- 4.3.6 If the Governing Document is silent on these matters, then it may be the case of following other statutory provisions that apply depending upon the type of charity<sup>18</sup> and guidance should be sought.
- 4.3.7 If the correct process to appoint an individual as a trustee is not followed the appointment will be invalid and that may (depending upon the charity's Governing Document) invalidate all decisions taken by the entire trustee board. It is therefore important to ensure that appointments are made correctly.
- 4.3.8 If the procedure for appointment of trustees is no longer appropriate then the charity should consider amending its Governing Document (see section 3.6).



4.3.9 The procedure for appointing trustees, as set out in the charity's Governing Document, should be followed. The charity's Governing Document may provide a number of different ways in which trustees can be appointed:

(a) Ex-officio trustees

- (i) An ex-officio trustee is an individual who becomes a trustee automatically by virtue of occupying some other office e.g., a vicar of a parish. An ex-officio trustee automatically becomes a trustee on taking up the particular office and ceases to be a trustee on leaving it. An ex officio post can only be filled in accordance with the charity's governing document.
- (ii) An ex-officio trustee cannot be compelled to take up the appointment. If there is a gap, the position can only be filled when the next person is appointed to the office.
- (iii) The trustee post of ex-officio is a legal right conferred on the office holder. Trustees may amend the Governing Document to remove an ex-officio post, but must first obtain agreement from the office holder concerned, and then advise the Charity Commission accordingly. This will not be required if the office in question no longer exists, in which case the Governing Document can be amended by demonstrating to the Charity Commission that the office no longer exists.
- (iv) An ex-officio trustee is bound by the same legal duties and terms as all other trustees and as such must regularly attend meetings and always act in the interests of the charity whatever the other roles they occupy. In particular, the ex-officio trustee must act in the best interests of the charity, not the organisation of which they are an office holder. This may lead to conflicts of interest which will need to be managed.
- (v) When making ex-officio appointments it is important to check that the underlying office still exists. For example, if the ex-officio appointment is of the Vicar of the Parish of Area A, then the trustees should confirm that the Parish of Area A still exists. If the parish has merged with another parish to form the Parish of Area A and B, then this does not necessarily mean that the ex-officio post now goes to the Vicar of the Parish of Area A and B. It will be necessary to check whether the rights have been transferred to the new office. In some cases where there have been changes in ecclesiastical parishes or local authority structures, the ex-officio offices referred to in the governing document may have ceased to exist. In those cases, the governing document should either be updated to refer to the equivalent office in the new organisation, or the role should be removed from the governing document.

(b) Nominated trustees:

- (i) An outside body, e.g., a local authority, sometimes has the right to nominate or appoint one or more individuals as trustee(s). Whether or not the charity is obliged to accept the appointment will depend on how the Governing Document is worded. The nominating body may, for example, only have the right to propose one or more individuals so trustees cannot be legally required to make the appointments; in other circumstances, the Governing Document may give the nominating body the power to make the appointment, leaving the trustees no discretion to refuse.
- (ii) If a nominated trustee fails to attend meetings and/or does not carry out their duties as a trustee, the Chair of trustees should contact the nominating body to resolve matters.
- (iii) The nominating body should select the trustee and the person appointed does not always have to be a member of the appointing organisation (e.g., a councillor) unless the charity's Governing Document requires this.



- (iv) Like any other trustee, a nominated trustee's primary duty when acting as a trustee is to the charity alone. They must act in the best interests of the charity and not treat trusteeship as an opportunity to promote the interests of the nominating body. Trustee meetings must be treated as confidential. The termination of the appointment of a nominated trustee can only be exercised by the nominating body following discussions between trustees and members of that body, unless the charity's Governing Document allows otherwise.
    - (v) Where the nominating body no longer wishes to nominate or appoint trustees or the trustee body wishes to amend the Governing Document to remove or reduce this right, written confirmation should be sought from the nominating body that it is happy to relinquish this right and then the Governing Document should be amended and the Charity Commission advised accordingly.
    - (vi) As with ex-officio appointments, if the nominating body referred to in the Governing Document has changed in structure, it may not necessarily be the case that the nomination rights have transferred to any new structure that has replaced the nominating body and the position should be checked.
  - (c) Co-opted trustees:
    - (i) The Governing Document of a charity may give existing trustees the power to invite and appoint a person to the trustee body as a co-opted trustee. This method of appointment is commonly used to recruit someone with relevant skills, knowledge or experience needed to fill a gap on the trustee board.
    - (ii) The provisions in the Governing Document relating to co-opted trustees (e.g., dealing with tenure of office) may differ from those for other trustees.
  - (d) Custodian and holding trustees:
    - (i) Some charities have a custodian or holding trustee. This type of trustee acts as the legal owner of some or all of the charity's assets, usually land and investments. This is explained further in [section 3.4](#).
    - (ii) A custodian or holding trustee has no say in the management of the charity or its assets and is obliged to follow the trustees' instructions.
  - (e) Corporate trusteeship:
    - (i) A corporate trustee is a corporation (usually a company limited by guarantee) appointed to act as a trustee of a charity.
    - (ii) The corporate trustee must have trust corporation status<sup>19</sup> to enable it to act as the sole trustee of a charity and own land.
- 4.3.10 Whenever there is a change to the trustee body either through the resignation of current trustees or the appointment of new trustees, the charity's details should be updated on the Charity Register through the Charity Commission portal.
- 4.3.11 The charity's Governing Document may specify:
- (a) how long an individual appointed as a trustee is entitled to serve as a trustee. When the individual reaches the end of their term of office the Governing Document may permit them to be reappointed. It is important to keep track of trustee terms of office because if an individual continues in post as a trustee after their appointment has come to an end, that may invalidate decisions taken by the trustee board after that date (subject to any saving provisions in the Governing Document).
  - (b) the maximum and minimum permitted numbers of trustees. Again, care should be taken to ensure that these criteria are not ignored.
  - (c) that before taking up office as a trustee the individual must signify in some way their consent to take up the role (for example by signing in the minute book or confirming their willingness to serve in writing).

#### Further resources:



- NCVO: [recruiting and inducting trustees](#)
- Charity Commission guidance: [Finding new trustees](#)
- The Almshouse Association guidance: [Trustee recruitment tips](#)
- Charity Commission guidance: Users on board: [beneficiaries who become trustees](#)
- Companies House form: [Appoint a director \(AP01\)](#)
- Charity Commission guidance: [How to update your charity's details](#)

#### Summary of process to appoint a trustee

- (1) Check whether any criteria for trustees are specified in the Governing Document.
- (2) Check that the individual is at least 18 (or 16 in the case of a company limited by guarantee or a CIO).
- (3) Check that the individual is not disqualified from being a trustee.
- (4) Check that the individual is a "fit and proper person" for HMRC purposes.
- (5) Check whether DBS checks are required.
- (6) Ask the individual to complete trustee eligibility and responsibility declaration.
- (7) Carry out an online search of social media and local news for anything that may be prejudicial to the charity in the individual's past.
- (8) Appoint the individual as a trustee in accordance with the Governing Document.
- (9) If the charity is unincorporated and it is required either execute a formal deed of appointment or a formal memorandum of appointment.
- (10) Update the Charity Commission register.
- (11) If the charity is a company limited by guarantee, file Companies House Form AP01 at Companies House, or complete WebFiling.
- (12) Provide the new trustee with copies of the charity's Governing Document.
- (13) Provide the new trustee with a formal induction.
- (14) Provide the new trustee with dates for the trustee meetings.

#### 4.4 What form of induction and training should a trustee receive?

- 4.4.1 The charity has a duty to ensure that all new trustees are given a full induction covering the work of the charity and the role of a trustee. Prospective trustees can be invited, before taking up any appointment, to observe a trustees' meeting to gain insight into how the charity operates to ensure that they understand what the role entails.
- 4.4.2 This induction should normally include the provision of a briefing pack which includes:
  - (a) the charity's Governing Document (including the Governing Document of any separate trusts of the permanent endowment ([see section 3.7.4](#));
  - (b) latest annual report and accounts;
  - (c) current year's budget and management accounts;
  - (d) minutes of trustee meetings for the past year;
  - (e) planned dates of future trustee meetings;
  - (f) a copy of or a link to Standards of Almshouse Management;
  - (g) a summary of the charity's history;



- (h) detailed explanation of all the charity's policies and procedures; and
  - (i) latest quinquennial buildings inspection report ([see section 16.2](#)).
- 4.4.3 New trustees should be invited to visit the charity and meet some of the residents and any staff employed by the charity. Some charities have a pastoral committee or allocate a number of residents to each trustee so that they establish a link with them.
- 4.4.4 The Almshouse Association also offers training for new trustees of almshouse charities.
- 4.4.5 All trustees should be advised as part of their induction to read the Charity Commission's guidance "The essential trustee: what you need to know (CC3)".

**Further resources:**

- Charity Commission guidance: [The essential trustee: what you need to know, what you need to do \(CC3\)](#)
- The Almshouse Association: [Training programme](#)
- The Almshouse Association website: see **Trustee Induction** guidance in [Model Policies and Templates](#)
- The Almshouse Association: [Panel of Consultants](#)

**4.5 How long should an individual serve as a trustee?**

- 4.5.1 The charity's Governing Document will usually state that an individual may serve as a trustee for a fixed period of time following which they may be permitted to be re-appointed for a further, or several, further terms. Different types of trustees may be appointed for different periods of time so the Governing Document should always be checked for the appropriate period.
- 4.5.2 When the fixed period of a trustee appointment comes to an end the trustee automatically ceases to be a trustee. If the individual continues to act as a trustee notwithstanding the fact that their term of office has come to an end this may invalidate future decisions of the trustees. Some Governing Documents will contain a provision that says that decisions of the trustees remain valid notwithstanding any defect in the appointment of an individual as a trustee, but this is less common in older Governing Documents.
- 4.5.3 It is good practice to maintain a central register of trustee appointments showing the dates on which they come to an end and individuals are due for reappointment. The trustees should ensure that the charity has succession plans so that new trustees can be identified and appointed to replace those retiring on a rolling basis without a gap, so as to ensure that the charity remains effectively governed.
- 4.5.4 If the trustees are required to be reappointed on a rotating basis at AGMs it is important to note that if the AGM does not take place those trustees who should have retired at the relevant AGM will normally be deemed to have retired once the period during which the AGM could have been held has expired, notwithstanding the fact that they might have been eligible to have been reappointed.
- 4.5.5 The advantages of having fixed periods of trusteeship and a regular turnover of trustees are:
- (a) the charity regularly benefits from the introduction of people with new ideas and abilities;
  - (b) the charity's policies and practices can periodically be reviewed with an objective eye; and
  - (c) it reduces the possibility of dominance, long-term misconduct or fraud by one person or a small group.
- 4.5.6 Occasionally, if the board of trustees is struggling to make progress with the charity, or be innovative to ensure the charity's successful future, it may be appropriate to consider replacing a more substantive section of the trustee group to avoid poor practices continuing to dominate the trustee board.
- 4.5.7 If the charity's Governing Document does not provide that the trustees serve fixed terms, then the governing document can be amended to introduce appropriate terms. This will be an administrative amendment that can, in most cases, be made without requiring consent from the Charity Commission



(see section 3.6). Alternatively, the trustees can agree a policy amongst themselves to retire after a period of time, but that will not necessarily be binding on future trustees.

- 4.5.8 Where the Governing Document makes no provision for fixed terms of office, a trustee is under no legal or moral obligation to step down. However, trustees have a legal duty to act in the best interests of the charity and should always consider whether they are still able to make a full and positive contribution in their role as a trustee.
- 4.5.9 A trustee, whether appointed for a fixed period or not, is entitled to resign their trusteeship at any time, save that:
- (a) if the individual is the only trustee (i.e., a sole corporate trustee), then they cannot resign unless a replacement or replacements are appointed;
  - (b) in some cases, ex-officio trustees may be unable to resign, after having taken up the position, depending upon the Governing Document; or
  - (c) in some cases, it may not be possible to resign if the charity would be left inquorate, depending upon the terms of the Governing Document.
- 4.5.10 If the charity will be left inquorate or without trustees following a retirement or retirements (if permitted by the governing document) then this is likely to be an event that will require the trustees to submit a serious incident report to the Charity Commission (see section 7.19).

## **4.6 What are the responsibilities of trustees?**

- 4.6.1 All trustees must, individually seek to:
- (a) carry out their role with propriety, integrity, dedication and commitment;
  - (b) avoid conflicts of interest (including conflicts of loyalty) and be clear to abstain from any involvement on any matter where they may have a conflict of interest; and
  - (c) be conversant with the charity's Governing Document, principles and policies as well as keeping abreast of legal and regulatory requirements, as well as best practice within the sector.
- 4.6.2 There are a number of general principles which apply to all trustees, they must:
- (a) act honestly, prudently and with integrity in the best interests of the charity;
  - (b) ensure the charity remains true to its charitable purposes and objects and carries them out for the public benefit;
  - (c) administer the charity in accordance with the Governing Document;
  - (d) only use the charity's funds for the charitable purposes set out in the Governing Document;
  - (e) ensure the charity plans and monitors its financial future and remains solvent;
  - (f) safeguard the charity's property, funds, assets and reputation, and avoid putting them at risk by neglect or speculation;
  - (g) comply with the law, Charity Commission requirements, and other relevant legal or regulatory frameworks; and
  - (h) avoid conflicts of interest (including conflicts of loyalty);
  - (i) seek external professional advice as appropriate; and
  - (j) safeguard the interests of the charity's residents, employees and volunteers.
- 4.6.3 Trustees have specific statutory duties depending upon how the charity is constituted (see section 3.2):



Type of charity	Duties
Unincorporated	<p>The trustees have a statutory duty<sup>20</sup> to exercise such care and skill as is reasonable in the circumstances when exercising their powers.</p> <p>The level of care and skill required is based upon:</p> <ul style="list-style-type: none"> <li>Any special knowledge or expertise that the trustee has, or holds themselves out as having; and</li> <li>If they act in the course of a business or profession, any specialist knowledge or expertise that it is reasonable to expect of a person acting in the course of that business or profession.</li> </ul>
Company limited by guarantee	<p>The trustees have statutory duties<sup>21</sup> to:</p> <ul style="list-style-type: none"> <li>act within their powers;</li> <li>exercise independent skill and judgment;</li> <li>exercise reasonable care, skill and diligence;</li> <li>avoid conflicts of interest;</li> <li>declare interests;</li> <li>not accept benefits from third parties; and</li> <li>promote the success of the charity.</li> </ul>
CIO	<p>The trustees have a statutory duty<sup>22</sup> to exercise their powers and perform their functions in such that, in good faith, would be most likely to further the purposes of the CIO. In addition, they have a duty to exercise such care and skill as is reasonable in the circumstances when exercising their powers.</p> <p>The level of care and skill required is based upon:</p> <ul style="list-style-type: none"> <li>any special knowledge or expertise that the trustee has, or holds themselves out as having; and</li> <li>if they act in the course of a business or profession, any special knowledge or expertise that it is reasonable to expect of a person acting in the course of that business or profession.</li> </ul>

#### Further resources:



- Charity Commission guidance: [The Essential Trustee 6 main duties](#)
- Charity Commission guidance: [Conflicts of interest: a guide for charity trustees \(CC29\)](#)



## 4.7 Payment

- 4.7.1 One of the defining characteristics of the charity sector has been the fact that trusteeship is unpaid, and this contributes greatly towards public confidence in charities and their governance.
- 4.7.2 The general principle, to ensure no conflict of interest when allocating resources, is that trustees cannot receive any benefit from their charity unless permitted by its Governing Document, legislation, or authorised by the Charity Commission or the Court.
- 4.7.3 Trustees may be reimbursed for genuine and reasonable out-of-pocket expenses personally incurred in carrying out their duties and these expenses should be supported by receipts. It is recommended that the charity put in place an appropriate expenses policy to make it clear to trustees what is considered reasonable in these circumstances. Loss of earnings payments, allowances and honoraria do not fall into the category of trustee expenses and require separate authorisation.
- 4.7.4 In some cases, the charity's Governing Document may make specific provision for a trustee to be paid in particular circumstances. In all other cases payment must be either sanctioned by the Charity Commission or in accordance with legislative provisions.
- 4.7.5 Trustees need to be alive to the fact that payments to connected persons (for example family members, or business partners) may also be prohibited.
- 4.7.6 In most cases any payment to an individual for performing their role as a trustee (as opposed to the provision of a service and/or goods) is strictly prohibited.
- 4.7.7 Payment for services and/or goods:
- (a) A trustee or a person connected to a trustee can be remunerated by the charity for the provision of a service and/or goods to the charity providing certain conditions are met<sup>23</sup>:
    - (i) there must be a written agreement between the charity and the trustee or connected person;
    - (ii) the agreement must set out the exact or maximum amount to be paid;
    - (iii) the trustee concerned must not take part in any decisions about the provision of the service and/or goods or the making of the agreement;
    - (iv) the payment must be reasonable in the circumstances;
    - (v) the trustees must be satisfied that the payment is in the best interests of the charity;
    - (vi) the total number of trustees who are either receiving payment or who are connected to someone receiving a payment are in a minority; and
    - (vii) there must be no prohibition against such a payment in the charity's Governing Document.
  - (b) This does not apply to remuneration for services and/or goods provided in the capacity as a trustee or under a contract of employment.
- 4.7.8 Payment to an executive who is also a trustee:
- (a) A charity may employ an existing trustee, but in the absence of any express authority in the charity's Governing Document the Charity Commission's consent will be needed to remunerate the individual. If the Charity Commission's authority is not obtained in advance, then any earning paid to the individual will need to be repaid to the charity. It should be noted that an individual cannot simply resign as a trustee with a view to then taking up a paid position of employment as this will still require Charity Commission consent.
  - (b) If an employee becomes a trustee, then their employment arises before their trusteeship and is not seen as a benefit arising from the trusteeship, so does not need to be authorised. However, future increases in salary would potentially need to be authorised depending upon the circumstances.
  - (c) If there is financial interdependence between a trustee and an employee (for example they are family members) then the Charity Commission's approval may be required for them to be employed, in the absence of any other constitutional authority.

- 4.7.9 Charities are recommended to disclose all payments to trustees, whether or not required by legislation and the Charities SORP (see [section 8.4.1\(c\)](#)).
- 4.7.10 Further rules apply to Registered Providers of Social Housing (see [section 13](#)).

**Further resources:**



- Charity Commission guidance: [Trustee expenses and payments \(CC11\)](#)
- Charity Commission guidance: [Conflicts of interest: a guide for charity trustees \(CC29\)](#)
- Charity Commission guidance: [Payments to charity trustees: what the rules are](#)

## 4.8 What responsibilities attach to specific officer roles?

- 4.8.1 The charity may have specific officer roles such as Chair and Treasurer. Trustees need to be aware that whilst these roles may have added responsibilities, all trustees are equally responsible for the acts and omissions of the board and individual trustees cannot merely rely upon other trustees to take necessary steps. It remains the case that all decisions must be taken by the trustees collectively.

### 4.8.2 Chair:

- Some Governing Documents make specific provision for the appointment of a Chair to chair the meetings of the board of trustees. The Governing Document will usually provide how the Chair is to be appointed and their term of office. If the Governing Document is silent, the trustees may still decide to elect one of their number to chair their meetings.
- It is often assumed that the Chair has a role which goes beyond simply chairing the meetings of the trustee board, but it is unlikely that the charity's Governing Document will confer any additional responsibility on the Chair.
- To avoid confusion, it is helpful to set out a description of the role in a document approved by all the trustees, so that trustees are clear on what they expect of the Chair.
- If the charity has employees, then the relationship between the Chair and the clerk or chief executive will be critical to the running of the charity as this is likely to be the most regular interface between trustees and employees. It is critical in ensuring overall effectiveness that this relationship should be based on mutual trust, respect and understanding. The Chair, acting on behalf of fellow trustees, provides direction, guidance and encouragement. Lines of responsibility between the executive and the non-executive roles should be clear and definitive.
- It is important for larger charities to have a single chain of command linking the executive function to non-executive trustees through a chief executive or clerk. Some charities have inherited a system whereby financial and executive accountability is channelled directly to the non-executive Chair. A single, executive chain of command with overall responsibility for implementation is recommended.

### 4.8.3 Honorary Treasurer:

- All trustees are responsible for running the charity and ensuring that it is properly managed financially. Some charities will appoint an Honorary Treasurer who will be responsible for overseeing the charity's financial affairs on behalf of the trustees.
- If there is no Honorary Treasurer, these duties will normally be undertaken by the Clerk to the trustees or a Chief Executive if there is one.
- The Honorary Treasurer is responsible for all areas of finance under the direction of the trustees, even if some are delegated to others, e.g., a bookkeeper. Responsibilities include:
  - maintaining the charity's books of account and arranging for the annual independent exam or audit;
  - arranging a bank account in the name of the charity and negotiating the terms on which it will operate;



- (iii) ensuring a robust system of internal control, including authorisation of expenditure, cheque signatories and limits;
  - (iv) preparing an annual income and expenditure budget, setting aside funds as reserves for Extraordinary Repair Fund (“ERF”) (see section 8.8), Cyclical Maintenance Fund (“CMF”) (see section 8.8), and calculation of Weekly Maintenance Contribution (“WMC”) (see section 9), to cover estimated costs after all investment and other income have been taken into account;
  - (v) planning for long term continuity and ensuring funds are sufficient to cover future maintenance needs;
  - (vi) reporting regularly to trustees throughout the year on financial progress compared with budget (often divided into monthly or quarterly periods prior to trustee meetings);
  - (vii) budgeting and controlling capital expenditure;
  - (viii) periodically reviewing the charity's investments, including investment property not used directly for the purposes of the charity (which may include chairing the charity's investment committee);
  - (ix) establishing and maintaining a fixed asset register of the charity's property and equipment;
  - (x) creating appropriate accounting procedures for fundraising;
  - (xi) ensuring trustees have read the Charity Commission guidance on Internal Financial Controls (see section 8.2);
- (d) In a large charity, with experienced and competent financial staff, trustees' control in this area may be exercised through a Finance Sub-Committee or Finance and General Purposes Sub-Committee to which the charity's Director of Finance will report. This sub-committee will have a Chair who may or may not be the Honorary Treasurer.

**All trustees remain responsible for, and should be familiar with, the charity's financial affairs, notwithstanding the appointment of an Honorary Treasurer.**

## 4.9 Meetings and Decision Making

4.9.1 The charity's Governing Document will specify whether or not trustees are required to take all decisions at meetings or whether they are permitted to make decisions outside of a meeting (for example in writing, or by unanimous agreement).

### 4.9.2 Meetings:

- (a) Trustees should meet regularly and the minimum number of meetings they are required to hold may be in the charity's Governing Document.
- (b) It is recommended that trustees aim to meet at least four times a year unless the charity's Governing Document or circumstance require the trustees to meet more often.
- (c) There should be sufficient meetings for trustees to maintain control of the charity, particularly during a major development programme. It may be appropriate for some charities to appoint sub-committees of trustees to deal with for example, finance or property matters. The charity's Governing Document should be checked to confirm what provisions are made in relation to committees, for example whether a certain number of trustees must be on the committee and/or whether non-trustees are permitted to serve on a committee.
- (d) The Governing Document may prescribe how meetings are to be called, the length of notice and whether or not the meeting may take place virtually. The notice provisions must be followed carefully to ensure that a meeting and any decisions taken at it are not invalidated due to a failure to follow the correct procedure.



- (e) The courts have held that a valid meeting takes place when two or more people can see and hear each other, therefore a meeting by video would potentially be a valid meeting but, in the absence of specific authorisation in the Governing Document, a telephone conference call would not be a valid meeting.
- (f) The Governing Document may require that certain meetings are called with a longer notice period than other meetings. For example, in some cases a meeting to appoint new trustees may be required to be called on special notice. In each case, depending upon the business to be carried out at the meeting, the Governing Document should be checked to ensure that the correct period of notice is given.
- (g) The Governing Document will also normally specify the quorum applicable to each type of meeting, i.e., the number of trustees that need to be present at the meeting for the meeting to be effective. If the Governing Document is silent then the quorum will be established by custom and practice, but the trustees should record the agreed quorum in some manner. If the meeting is not quorate the trustees present cannot make any decisions and the meeting should be adjourned and reconvened at an appropriate date. The quorum is required to be maintained throughout the meeting.
- (h) It is recommended that in advance of the meeting those attending are sent an agenda and appropriate supporting paperwork so that they can attend the meeting prepared to discuss the key issues.
- (i) The meeting should be run by the Chair (or one of the trustees nominated to chair the meeting) who should:
  - (i) confirm whether any trustees present have any conflicts of interest to declare (and whether they need to be absent for any part of the meeting);
  - (ii) seek participation from all the trustees present;
  - (iii) enforce any agreed procedural rules;
  - (iv) exercise control over the administration of the meeting;
  - (v) confirm that the meeting is quorate; and
  - (vi) ensure that the meeting deals with business set out on the agenda to the meeting.
- (j) The trustees should take minutes of their meetings, and the Governing Document may require this. In the case of companies limited by guarantee<sup>24</sup> and CIOs<sup>25</sup>, this is a statutory requirement.
- (k) It is recommended that minutes include details of:
  - (i) the charity;
  - (ii) the type of meeting;
  - (iii) the date, time and place where the meeting was held (including whether the meeting was virtual or in person);
  - (iv) apologies for absence;
  - (v) details of those present (including any individuals who are not trustees);
  - (vi) all conflicts of interest that have been declared;
  - (vii) the details of the person who chaired the meeting; and
  - (viii) a record of the discussion at the meeting, details of the information presented to the trustees in relation to any particular item and the decisions reached by the trustees (including the precise wording of any resolution passed by the trustees). In order to comply with data protection principles (see section 15) the minutes should avoid naming specific residents or individuals where possible.
- (l) Ideally minutes would be taken by someone who is not taking part directly in the meeting (for example the Clerk or a secretary retained to prepare the minutes), so as to enable all trustees to participate actively in the meeting. As a matter of good practice minutes should



be drafted as soon as reasonably practicable after a meeting whilst the events of the meeting are still fresh in people's minds.

- (m) The minutes should be circulated to the trustee board, approved by the trustees at the commencement of the next meeting and then signed as an accurate record by the Chair.
- (n) The minutes of meetings should be recorded sequentially and kept in a minute book, which can either be a bound book or a loose-leaf folder depending upon the charity's tradition, custom and practice. It is sensible to number the minutes in some fashion so that any missing pages can be identified. Alternatively, the minutes may be stored in electronic form on the charity's computer system.
- (o) As a matter of good practice, it is recommended that the minutes are retained indefinitely during the lifetime of the charity (and arrangements are made for the minutes to be retained for an appropriate period after the dissolution of the charity)<sup>26</sup>. In order to comply with data protection principles, the minutes should be kept securely ([see section 15](#)).
- (p) The trustees may invite non-trustees to attend their meetings, but no one apart from charity trustees can vote at their meetings. Invitees should only be present for the relevant agenda items. If the Clerk or Chief Executive or other employees of the charity attends the meetings it would be appropriate for there to be at least one meeting a year where the trustees meet without the Clerk or Chief Executive or other employees of the charity in attendance for at least part of the meeting, so that their performance can be reviewed and any concerns raised.
- (q) Trustees should make every reasonable effort to attend all meetings. Each trustee bears an equal responsibility for all aspects of the charity, and it is not acceptable for a trustee to attend irregularly or only when particular subjects are discussed. A Governing Document sometimes make specific provision for trustees who fail to attend to cease to be trustees. Trustees may wish to include in their standing procedures a clause warning that if a trustee persistently fails, without good reason, to attend meetings or take an active part in running the charity, they may be asked to stand down.

**Summary of process to run a meeting**

- (1) Check notice provisions for meetings in the Governing Document.
- (2) Provide notice of the meeting in accordance with the Governing Document.
- (3) If the meeting is to be held online, check that this is permitted by the Governing Document.
- (4) Provide agenda and supporting papers to trustees in advance of the meeting.
- (5) If apologies are received in advance, confirm that the meeting will still be quorate.
- (6) Ask all trustees to declare conflicts of interest at the start of the meeting.
- (7) Check that the meeting is quorate.
- (8) Check that all individual present are entitled to be present.
- (9) Approve the minutes of the last meeting.
- (10) Proceed with the business on the agenda.
- (11) Deal with any other business.
- (12) Confirm date of next meeting and close meeting.

**4.9.3 Decision making:**

- (a) Decisions need not be unanimous unless the Governing Document states otherwise. The votes of the majority of the trustees (or the majority of those present where there is express provision for a quorum) are binding on the minority. In some cases, in particular in relation to charitable companies and CIOs, it may be necessary to have a 75% majority or unanimity to pass certain resolutions as prescribed in legislation.
- (b) Trustees are jointly and individually responsible for all decisions taken at a properly constituted meeting. A trustee who votes against a motion that is carried is bound by, and responsible for, the decision and its consequences and there is a principle of “collective responsibility”. A trustee who does not attend a properly constituted meeting is also bound by any decision taken at that meeting. If a trustee cannot support a decision that has been taken, then the appropriate course of action to take is to resign as a trustee. It is not appropriate for a trustee to seek to undermine decisions taken by their fellow trustees outside of a meeting.
- (c) Discussions as trustee meetings should be considered confidential and not discussed outside of the meeting with third parties.
- (d) If, owing to death, resignation or permanent absence of trustees, it becomes impossible to hold a properly constituted trustees’ meeting, the Charity Commission should be contacted for advice on how to proceed. The Almshouse Association can also assist and advise.
- (e) Many charities have now agreed they can take decisions electronically (e.g., by email or other electronic form), which may be stated in the Governing Document. If it is not addressed in the Governing Document, then the Governing Document should be amended in the appropriate manner ([see section 3.6](#)). Thereafter items may be circulated via email for decision and any email agreement recorded.
- (f) When making decisions the trustees should bear in mind the Charity Commission’s guidance on decision making. In particular trustees must be able to demonstrate that they:
  - (i) act within their powers;
  - (ii) act in good faith and only in the interests of the charity;
  - (iii) make sure they are sufficiently informed;
  - (iv) take account of all relevant factors;



- (v) ignore any irrelevant factors;
- (vi) manage conflicts of interest; and
- (vii) make decisions that are within the range of decisions that a reasonable trustee body could make.

**Further resources:**

- Charity Commission guidance: [Charities and Meetings \(CC48\)](#)
- Charity Commission guidance: [It's your decision: charity trustees and decision making \(CC27\)](#)
- Charity Commission guidance: [Conflicts of interest: a guide for charity trustees \(CC29\)](#)

**4.10 Conflicts of Interest**

**Trustees must only make decisions based upon what is best for the charity and, in doing so, have a duty to manage any conflicts of interest that they may have. Trustees should not allow their own personal interests, or those of individuals that they may be connected to, to influence their behaviour as trustees.**

- 4.10.1 Conflicts of interest may arise due to a financial interest in a particular decision, but also conflicts of interest may arise due to a conflict of loyalty with the trustee having duties to different organisations.
- 4.10.2 To deal with conflicts of interest:
- (a) Trustees must declare any relevant conflict of interest to their fellow trustees. This can be done at the start of each trustee meeting and, in addition, it is appropriate to keep a register of trustees' interests that sets out all potential conflicts of interest.
  - (b) Trustees must follow any rules in their Governing Document about conflicts of interest and adopt an appropriate policy. If there is any doubt, The Almshouse Association can provide advice.
  - (c) Trustees must decide how to either remove the conflict so as to prevent it influencing a decision or, if the conflict cannot be removed, take appropriate steps to manage the conflict as set out in the charity's Governing Document.
  - (d) Trustees should in each case:
    - (i) record the conflict;
    - (ii) identify who was conflicted;
    - (iii) record how the conflict was declared; and
    - (iv) record how the conflict was managed.
  - (e) At all times the trustees should follow the Charity Commission's guidance on conflicts of interests.
- 4.10.3 In a company limited by guarantee the trustees have a statutory duty to avoid conflicts of interest<sup>27</sup>. The trustees must in certain circumstances make appropriate declarations of interest<sup>28</sup> and a failure to do so is a criminal offence.
- 4.10.4 In a CIO the trustees may not benefit personally from any arrangement or transaction entered into by the CIO unless they declared their interest in advance<sup>29</sup>. In addition, a trustee who would benefit personally, whether directly or indirectly from a transaction or arrangement with the CIO must not take part in any the making of the decision or be counted in the quorum necessary for making the decision<sup>30</sup>.

**Summary - dealing with conflicts of interest**

**DECLARE  
RECORD  
MANAGE**



#### Further resources:



- Charity Commission guidance: [Conflicts of interest: a guide for charity trustees \(CC29\)](#)
- The Almshouse Association website: see **Model Conflict of Interest Policy** in [Model Policies and Templates](#)

### 4.11 Trustees' liability

4.11.1 The potential liability of trustees will vary depending upon whether or not the charity is unincorporated or incorporated (see section 3.3).

#### 4.11.2 Civil claims for unincorporated charities:

- In the event of a civil claim against the trustees (e.g., for third-party debts, breach of contract, personal injury claims, employment related claims etc.), if the trustees are found liable, the individual trustees will be jointly and severally liable for the claim.
- In the event that the claim was not insured, then the individual trustees would be entitled to use the assets of the charity to indemnify themselves against the liability and discharge the liability<sup>31</sup>.
- The indemnity only applies to the extent that the liability does not arise as a result of the trustees' own wilful act or default.
- If the assets of the charity are insufficient to meet the liability, then the individual trustees must discharge the liability from their personal assets.
- There may be some circumstances in which the trustees cannot rely on their trustee indemnity and will remain personally liable for meeting any claim, for example in relation to defamation claims where the individual has personally made the defamatory comment etc.

#### 4.11.3 Civil Claims for corporate charities:

- The civil claim would be against the corporate entity itself rather than against the individual trustees. In these circumstances, if there is any shortfall in the assets of the corporate entity that are available to meet the claim, there is no personal liability for the trustees of the corporate entity, they have the benefit of "limited liability" protection.
- There are some areas in which limited liability protection will not assist the trustees and they will remain personally liable, including:
  - If the corporate entity has been operating whilst insolvent, the trustees would remain personally liable for debts and liabilities incurred after the point at which they should reasonably have concluded that the corporate entity was insolvent.
  - If the trustees have acted in a way that is discriminatory towards a resident, employee, contractor or other trustee, they may be found to be personally liable as well as, or instead, of the corporate entity.
  - If the trustees have provided any personal guarantees for the liability of the corporate entity (these are sometimes requested by third parties but would normally be refused).
  - If the trustees have authorised the use of funds for purposes outside of the objects of the charity and/or in breach of the terms on which any restricted funds are held.
  - If the trustees have acted in breach of trust and/or their statutory duties (e.g., as charity trustees or company directors) and the corporate entity has suffered a loss as a result where the Charity Commission and/or the Courts are not prepared to relieve the trustees from personal liability.
  - If the trustees have made defamatory statements, the individuals who made the statements or who are responsible for them being published would remain liable.



#### 4.11.4 Criminal claims:

- (a) In the event of a criminal claim, then the trustees of an unincorporated charity would be prosecuted personally.
- (b) It will never be possible to reduce the trustees' liability for all criminal claims, as many offences look at the "controlling mind" as opposed to the entity or the individual involved. Therefore, even if the charity is a corporate charity the trustees remain potentially at risk if the offence was committed with the consent or connivance of, or was attributable to, any neglect on the part of, any trustee then that person is potentially personally liable.

#### 4.11.5 Trustee indemnity insurance:

- (a) Trustee indemnity insurance provides insurance cover for trustees, to cover them from having to pay any legal claims that are brought against them personally, for a breach of trust, or a breach of duty or negligence committed by them in their capacity as trustees.
- (b) Trustee indemnity insurance is a personal benefit for trustees, so needs to be authorised either by the Governing Document or in accordance with legislation<sup>32</sup>.
- (c) Trustee indemnity insurance cannot cover individuals for fines imposed in criminal proceedings, penalties paid to regulatory authorities, defending criminal proceedings where the individual is found guilty or for any liability incurred when the individual knew (or ought to have known) that their conduct was not in the best interests of the charity.
- (d) Whilst the liability of trustees of corporate charities (i.e., CIOs and companies limited by guarantee) is reduced, there are still instances in which the trustees can be personally liable and therefore trustee indemnity insurance should be considered.

#### Further resources:



- Charity Commission guidance: [Vicarious liability of a charity or its trustees](#)
- Charity Commission guidance: [The essential trustee: what you need to know, what you need to do \(CC3\)](#)
- Charity Commission guidance: [Charities and insurance](#)

### 4.12 Delegation

- 4.12.1 Trustees should always exercise their powers personally unless they are expressly authorised by the charity's Governing Document, or legislation, to delegate their powers to someone else to exercise on their behalf.
- 4.12.2 If a third party exercises the trustees' powers on their behalf without such powers having been properly delegated, the decisions taken or acts carried out, will be ineffective, which may have consequences depending upon the decision taken or act carried out.
- 4.12.3 Whilst trustees may, in proper circumstances, delegate the exercise of their powers to third parties they will not be able to delegate their responsibilities. In most cases the trustees will remain responsible for any acts carried out by third parties exercising their delegated powers.

#### **Can trustees delegate the responsibility for the appointment of residents?**

No, the appointment of residents (i.e., exercising the trusts of the charity) is a trustee responsibility and can only be carried out by the trustees. The trustees can delegate the task of carrying out due diligence on potential appointees to members of staff / third parties, but the formal decision to appoint a resident must be carried out by the trustees.

- 4.12.4 Due to the fact that the trustees remain responsible for the exercise of any delegated powers it is important that in each case:



- (a) the extent of authority being delegated is clear. Does the individual have the ability to make decisions, or merely to advise the trustees and/or implement in an administrative capacity a decision already taken by the trustees?
- (b) the individual is required to report back to the trustees how the powers have been exercised; and
- (c) the trustees consider, if delegating to a committee, whether one or more members of the committee should be trustees (this may well be provided for in the charity's Governing Document).
- 4.12.5 It is common practice for trustees to delegate day to day management of the charity to a chief executive, clerk, administrator or managing agent. In addition, it may be appropriate to form sub-committees for particular projects or specific areas (such as finance or investment). In each case the trustees need to make sure that they have the appropriate ability to delegate in the manner intended and that the basis of the delegation is properly recorded so that everyone knows the boundaries of the delegation.
- 4.12.6 The constitutional power to delegate will depend upon the provisions in the charity's Governing Document and/or legislation.

Type of Charity	Power
Unincorporated	<p>The Governing Document will often include an express power of delegation to permit delegation to a specific individual and/or a committee. This may in some cases be framed as a power to employ agents or employees.</p> <p>Legislation<sup>33</sup> provides that trustees may delegate:</p> <ul style="list-style-type: none"><li>• any function consisting of carrying out a decision that the trustees have already taken;</li><li>• any function relating to the investment of the charity's assets;</li><li>• any function relating to raising funds for the charity (excluding trading); and</li><li>• any other function prescribed by legislation.</li></ul> <p>The legislative power is limited and cannot be used to delegate substantive decision making about the charity's operations.</p> <p>In addition, trustees can delegate all or any of their powers to another individual using a power of attorney for a period of up to 12 months<sup>34</sup>.</p>
Company	<p>The Articles will normally include an express power of delegation to permit delegation to a specific individual and/or a committee.</p> <p>Trustees cannot delegate their powers by a power of attorney.</p>
CIO	<p>The Constitution will normally include an express power of delegation to permit</p>

	<p>delegation to a specific individual and/or a committee.</p> <p>In addition, the trustees can rely upon the same legislative provisions as trustees of an unincorporated charity<sup>35</sup>.</p> <p>Trustees cannot delegate their powers by a power of attorney.</p>
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#### Further resources:



- NCVO guidance: [Delegation decisions to committees and employees](#)

### 4.13 Good Governance

4.13.1 There are number of key characteristics of effective governance of a charity by its trustees:

(a) Trustee body and trusteeship:

- (i) A strong governing body - informed and active with the right balance of skills, experience and abilities to act in the best interests of the charity on behalf of its beneficiaries.
- (ii) Effective leadership - clearly defined roles and responsibilities and named officers.
- (iii) Knowing responsibilities and liabilities - not assuming, guessing or listening to speculation, but finding out, understanding governing documents, duty of care, financial and legal liabilities.

(b) Purpose and direction:

- (i) Vision - knowing the way ahead and how to get there; a clear interpretation of the governing document, mission, aim and direction to steer the charity to meet its goals, purposes and environmental responsibilities.
- (ii) Values - a strong set of values that underpin the vision including openness and transparency, honesty, integrity, and compliance with legal obligations.

(c) Management and control:

- (i) Policies and practices - robust, effective, practical, and regularly reviewed, enabling the charity to achieve its purpose.
- (ii) Culture of learning and continuous improvement - keeping up to date with developments; accepting and learning from mistakes and feedback, reviewing and improving performance, and informing future direction.

(d) Long-term planning and risk management:

- (i) Effective, long-term planning - a long-term strategy, particularly in relation to income and building maintenance.
- (ii) Managing assets and resources - to gain the best outcome for beneficiaries, making the most of land, buildings, money and people.
- (iii) Managing risk - being prudent but ensuring the charity makes the most of its opportunities; and using a robust risk management framework to assess and minimise short- and long-term risks.



- (e) Accountability and transparency:
  - (i) Decision making and accountability - decisions to be reasonable and transparent, ensuring trustees are accountable to the beneficiaries, donors/benefactor, stakeholders and the public.
  - (ii) Adaptable and vigilant - monitoring the charity's performance and the needs of beneficiaries, changing social circumstances, new opportunities and expectations.
- (f) Succession and emergency or crisis planning:
  - (i) Succession planning - planning for and ensuring continuity.
  - (ii) Emergency or crisis planning - plans which prepare the charity in the event of an emergency or crisis.

4.13.2 The trustees should be familiar with the Charity Governance Code (the “**Code**”) and regularly considering auditing their performance against the Code.

**Further resources:**



- The Almshouse Association website: See **Governance Checklist** in [Model Policies and Templates](#)
- [The Charity Governance Code](#)

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## CHECKLIST – TRUSTEES

### Appointment of Trustees:

- ☒ Are all of the individuals who are trustees eligible to be trustees?
- ☒ Are any of the trustees subject to automatic disqualification?
- ☒ Have all of the trustees completed trustee eligibility and disclosure forms?
- ☒ Have all necessary DBS checks been carried out on trustees?
- ☒ Have all trustees been properly appointed and is there appropriate evidence of their appointment?
- ☒ Has the Charity Commission register been updated to reflect all changes in appointments?

### Induction:

- ☒ Have all trustees been provided with an induction pack?
- ☒ Have all trustees been provided with an induction?
- ☒ Have trustees been provided with appropriate training?

### Succession planning:

- ☒ Have any of the trustees served in excess of the periods permitted by the Governing Document?
- ☒ Have there been regular changes in the trustee body?
- ☒ Is there a plan to start recruiting replacement trustees six months before an existing trustee is due to step down?

### Trustee duties:

- ☒ Do all trustees understand their duties?
- ☒ Are any trustees paid for goods and/or services and, if so, has the appropriate authorisation been obtained?



- ✓ Have all trustees completed a declaration of conflicts of interest?
- ✓ Are all trustees familiar with the charity's financial position?

#### Meetings:

- ✓ What notice provisions are required for meetings?
- ✓ Can meetings be held virtually or in hybrid form?
- ✓ Can decisions be made outside of meetings by email / in writing?
- ✓ How many trustees are required for a meeting to be quorate?
- ✓ Has the charity got a complete record of the minutes of all its meetings?
- ✓ Has the charity got a conflicts of interest policy?

#### Insurance:

- ✓ Have the trustees taken out trustee indemnity insurance?

#### Delegation:

- ✓ Do the trustees make all the appointments of residents?
- ✓ Are the terms of any delegation to third parties properly recorded?

#### Governance:

- ✓ Have the trustees read and applied the Charity Governance Code?

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#### References:

- <sup>14</sup> Section 177 of the Charities Act 2011.
- <sup>15</sup> Section 178 of the Charities Act 2011.
- <sup>16</sup> Section 181 of the Charities Act 2011.
- <sup>17</sup> See the Finance Act 2010.
- <sup>18</sup> Unincorporated charities should follow the provisions of the Trustee Act 1925 and companies should follow the provisions of the Companies Act 2006. The provisions for the appointment of trustees of a CIO must be set out in its Constitution, see section 206(2)(b) Charities Act 2011.
- <sup>19</sup> A body corporate that is itself a charity will have trust corporation status by virtue of section 334A of the Charities Act 2011.
- <sup>20</sup> Section 1 of the Trustee Act 2000.
- <sup>21</sup> Sections 171 – 177 of the Companies Act 2006.
- <sup>22</sup> Section 221 of the Charities Act 2011.
- <sup>23</sup> Section 185 of the Charities Act 2011.
- <sup>24</sup> Section 248 of the Companies Act 2006.
- <sup>25</sup> Regulation 37 of the Charitable Incorporated Organisations (General) Regulations 2012.
- <sup>26</sup> Companies are required to maintain minutes for a minimum of 10 years from the date of the relevant meeting and CIOs are required to maintain minutes for a minimum of 6 years from the date of the relevant meeting.
- <sup>27</sup> Section 175 of the Companies Act 2006.
- <sup>28</sup> Part 10, Chapter 3, of the Companies Act 2006.
- <sup>29</sup> Section 222 of the Charities Act 2011.
- <sup>30</sup> Regulation 36 of The Charitable Incorporated Organisations (General) Regulations 2012.
- <sup>31</sup> Section 31 of the Trustee Act 2000.
- <sup>32</sup> Section 189 of the Charities Act 2011.
- <sup>33</sup> Section 11 of the Trustee Act 2000.
- <sup>34</sup> Section 25 of the Trustee Act 1925.
- <sup>35</sup> Regulation 33 of the Charitable Incorporated Organisations (General) Regulations 2012 applies the provisions of the Trustee Act 2000 in relation to delegation, with appropriate amendments.



## 5 EMPLOYEES

### 5.1 Introduction

- 5.1.1 The trustees are the individuals who have the “*general control and management of the administration of a charity*”<sup>36</sup>.
- 5.1.2 Most charities will have an employee or employees whose role is to assist the trustees in advancing the charity’s purposes and to implement the strategic decisions taken by the trustees.
- 5.1.3 Whilst the trustees may delegate wide ranging powers and authority to an employee or employees ([see section 4.12](#)), employees should never have the power or authority to take strategic decisions that are reserved to the trustees alone. In particular, trustees cannot delegate the appointment of residents to employees (or managing agents).
- 5.1.4 The role of:
- (a) **TRUSTEES** relate to governance: ensuring that the charity has a clear mission and strategy and has appropriate policies and procedures in place; and
  - (b) **EMPLOYEES** relate to day-to-day management of the charity: the carrying out and implementation of the decisions made by trustees.
- 5.1.5 If the charity employs staff, then the trustees need to be aware of and comply with the relevant employment legislation which covers every stage of employment, from the initial recruitment process, through to any termination of the position.
- 5.1.6 There is a legal distinction between “workers” (who may only occasionally work for a charity on a casual or as required basis) and “employees”. This chapter deals with employees and if the charity is concerned whether an individual is a worker on a self-employed basis or an employee, they should take professional advice.

### 5.2 Recruitment, Selection, Appointment and Induction

- 5.2.1 The recruitment and appointment of employees may be carried out by trustees, other members of staff or by retaining an employment agency. The process carried out must be planned carefully.
- 5.2.2 Step 1 – identify and document the responsibilities of the role you are recruiting to fill:
- (a) Create a job description explaining the specific responsibilities of the role. This should be in plain English and cover:
    - (i) job title and overall summary and expectations of the role;
    - (ii) whether the contract is fixed-term or permanent, and the hours required;
    - (iii) how the role fits into the charity;
    - (iv) the purpose of the role and the tasks and responsibilities to be performed by the employee;
    - (v) reporting and line-management responsibilities;
    - (vi) salary details and any employment benefits;
    - (vii) (where the role will have contact with adults at risk) safeguarding responsibilities and the legal eligibility of the role for a DBS check (and at what level) ([see section 5.2.6\(c\)](#));
    - (viii) where the role will be carried out and whether it can be done in whole, or in part, on a remote basis; and
    - (ix) details of the charity and the charity’s culture and values.
  - (b) Create a person specification setting out the particular knowledge, skills and experience that will be needed by the person appointed to carry out the role. This should:



- (i) be clear as to which skills are essential and which are desirable;
- (ii) not include any age restrictions or any other discriminatory criteria (e.g., the charity should not state that it is looking for a certain number of years of experience, as this could be considered age discriminatory);
- (iii) if the charity has identified that the role will have contact with adults at risk, highlight the safeguarding responsibilities associated with the role;
- (iv) ask for qualifications if they are relevant to the job and make it clear if looking for a particular qualification whether equivalent qualifications will also be considered;
- (v) avoid jargon; and
- (vi) only include criteria that relate to protected characteristics ([see section 5.10.1](#) if this is a genuine “occupational requirement”<sup>37</sup>).

#### 5.2.3 Step 2 – advertise the role and invite applications:

- (a) The advert should provide a clear explanation of the charity, the role being advertised, the timetable for applications and how interviews will be carried out.
- (b) The charity should consider whether it is appropriate to have a standard application form, or whether it is more appropriate to ask applicants to submit CVs with a covering letter. This will depend upon the type of role being applied for and how regularly the charity carries out recruitment. It is usually preferable to adopt a standard form for all applications as this makes it easier for the charity to identify any gaps or omissions so that these can be discussed with the candidate.
- (c) Where the role involves contact with adults at risk ([see section 5.2.6\(c\)](#)), the advert should send out a clear safeguarding message by stating the charity’s commitment to keeping adults at risk safe.
- (d) The charity may wish to use an equality monitoring form so that it can gather appropriate information to demonstrate that it is not discriminating in how it is making recruitment decisions.
- (e) When receiving applications, the charity will be receiving personal information ([see section 15.2.4](#)) and therefore needs to include an appropriate privacy notice (or refer to the charity’s standard privacy notice) in the advertisement or details of the application process to make it clear how such information will be dealt with.
- (f) The charity should consider whether there are any potential internal applicants for the role and, in such circumstances, the extent to which it is necessary to advertise externally. In most cases it will still be appropriate to advertise externally, so as to avoid any suggestion of discrimination.
- (g) The charity should consider carefully before using any external employment agency, so as to ensure that the recruitment fees being charged are reasonable and proportionate for the role being recruited.

#### 5.2.4 Step 3: Shortlist candidates and carry out interviews:

- (a) The charity should identify who will carry out the interviews. As a minimum three people should be on the panel and, depending upon the role being recruited, it would be appropriate for trustees to be involved in the interview process.
- (b) If possible, the interview dates should be arranged before the job is advertised and those taking part in the process should confirm that they are available on the date chosen.
- (c) Care should be taken in carrying out the shortlisting process so as to avoid any unconscious bias. It can be helpful for each member of the panel to score the applications separately using an agreed numbering system, considering the person specification drawn up before the job was advertised ([see section 5.2.2\(b\) above](#)).
- (d) The charity must be careful to avoid any discrimination against the applicants, based on the protected characteristics ([see section 5.10.1](#)). The charity should seek to appoint the best person for the job. The charity should avoid discriminating against:





- (i) individuals who seek to work on a part time basis<sup>38</sup>;
  - (ii) individuals who are being recruited to work on a fixed term basis<sup>39</sup>; and/or
  - (iii) individuals of different genders<sup>40</sup>.
- (e) Once the charity has shortlisted the candidates who are to be invited for interview, arrangements should be made to carry out the interviews. When inviting candidates for interview the charity should ask whether any reasonable adjustments need to be made for the benefit of the candidate to enable them to attend the interview.
- (f) Before carrying out the interviews the charity should prepare a set of standard questions to be asked of all the candidates which relate to the person specification. The questions should be clear, open and non-discriminatory. If the role will be working with adults at risk, the charity should choose some questions that will enable it to explore the candidate's suitability to work with adults at risk, their attitudes and motivations for applying for the role. Any gaps in the candidate's employment history should be identified and the candidate should be asked to explain them. The charity should prepare a standard score sheet to be used by the members of the interview panel.
- (g) Candidates should not be asked any questions about their health before a job offer is made, unless they relate to essential requirements for the performance of the particular role.
- (h) The interview should be viewed as a two-way conversation and the applicant should be encouraged to ask questions about the role and the charity. However, the interviewers should make sure that the interview covers all of the standard questions and where appropriate should direct the conversation accordingly.
- (i) At the conclusion of the interview the applicant should be informed of the next steps in the process but should not be given any indication as to whether or not they have been successful (in particular to avoid any suggestion that a verbal contract has been entered into).
- (j) The interview panel should ensure that the notes they take during the interview process are factual, rather than based on impressions. In particular care should be taken to avoid writing discriminatory or defamatory comments.
- (k) After the interview the panel should consider the scores they have given each candidate and identify the appropriate individual to recruit.
- (l) All of the notes of both the interview process and any selection discussion should be retained. Applicants who are unsuccessful may make a complaint to the employment tribunal and, if they do so, they will have a right to ask to see the interview notes. In addition, the applicants may make a subject access request under the data protection legislation for copies of the interview notes. The notes should be retained for at least six months after the interview process concludes.

#### 5.2.5 Step 4: decide who to appoint:

- (a) The interview panel should consider each candidate against the person specification drawn up before the job was advertised ([see section 5.2.2\(b\) above](#)).
- (b) The charity should seek to appoint the candidate who is best qualified for the position and should avoid making any appointment that is based on discrimination or unconscious bias.

#### 5.2.6 Step 5: making the appointment:

- (a) Any offer of employment should be in writing, clearly setting out the terms and conditions of employment, providing any other relevant documents (e.g., contract of employment, staff handbook, forms that need to be completed etc.) and confirming the date by which the offer must be accepted. The offer should confirm whether the appointment is subject to a probationary period which would be recommended.
- (b) The offer should be expressed as being conditional upon the satisfactory completion of pre-employment checks which include:
  - (i) checking the individual's identity;



- (ii) the taking up of references (once the individual has confirmed that the charity may do this, e.g., approaching the individual's current employer);
  - (iii) confirming that the individual has the right to work in England and Wales<sup>41</sup>;
  - (iv) a health check, if considered appropriate, to confirm that the prospective employee does not have any health conditions or disabilities that would affect their ability to do the job<sup>42</sup>; and
  - (v) confirming that the individual has any necessary qualifications.
- (c) Where the job description includes working with adults at risk (see section 6), pre-employment checks may include a disclosure and barring service or DBS check, if eligible to the job, to ascertain an employee's criminal record history.
  - (i) The legislation in this area limits significantly an employer's right to information about an employee's criminal record history. It is not possible to attempt to circumvent this legislation by asking individuals to make disclosure on a voluntary basis.
  - (ii) The charity can carry out a basic DBS check which will disclose any "unspent" cautions or criminal convictions if they have the individual's consent but should only do so if it is necessary for the purposes of the job. Alternatively, the individual can be asked to carry out the check themselves and provide the charity with the result. The charity may consider it appropriate to cover the cost of the individual applying for their own certificate.
  - (iii) For some posts the charity will be able to carry out standard or enhanced or enhanced with barred list DBS checks, but the charity needs to check that they are legally entitled to carry out such checks. In the context of an almshouse, it is likely that this will apply if the charity is carrying out "regulated activities"<sup>43</sup> (see section 14) and the individual will be employed in relation to such activities.
  - (iv) If the role is eligible for a standard or enhanced DBS check then the charity should always carry out the check. If the role is not eligible for a standard or enhanced DBS check then the trustees should carry out a risk assessment, in relation to each role, to decide whether or not a basic DBS check should be requested. Such a risk assessment would normally be carried out before a job is advertised, and the requirements set out in the job description and advert.
  - (v) If the charity does ask information about criminal records, then it needs to have in place an appropriate policy for the holding and processing of such information<sup>44</sup> (see section 15) and if requesting DBS checks it must have a policy on the recruitment of ex-offenders<sup>45</sup>.
- (d) Once the pre-employment checks have been carried out satisfactorily, the offer of employment can be confirmed.
- (e) Once the successful applicant has accepted the job, the charity should inform the other candidates that they have been unsuccessful and it may be appropriate to provide constructive feedback.

#### 5.2.7 Step 6: Induction:

- (a) Following appointment of a new employee the charity should arrange appropriate induction.
  - (i) This should include a briefing on the charity, an explanation of the unique features of an almshouse and the almshouse movement, an understanding of the governance arrangements of the charity and an introduction to all of the relevant policies and procedures.
  - (ii) The individual's job description should be discussed so that they understand the role and where it fits within the charity's structure.
- (b) During the induction process it is helpful to identify any specific training needs the individual may have and to arrange appropriate training. The Almshouse Association runs specific



training courses for those involved in almshouses, as do many of The Almshouse Association's panel of consultants.

5.2.8 Step 7: Completion of the probation period

- (a) The charity should have a clear process for managing the new employee's performance and conduct during their probation period. During this period progress should be reviewed regularly and appropriate objectives set.
- (b) At the end of the period the charity can:
  - (i) confirm the employee in post;
  - (ii) extend the employee's probationary period; or
  - (iii) terminate the employee's employment.

**Summary of process to appoint employees**

Step 1: identify and document the responsibilities of the role you are recruiting to fill:

Step 2: advertise the role and invite applications:

Step 3: shortlist candidates and carry out interviews:

Step 4: decide who to appoint:

Step 5: make the appointment:

Step 6: carry out an induction

Step 7: confirm the individual in post after their probation period

**EXAMPLE****Roles and Responsibilities – Clerk**

The Clerk's role is to provide professional administrative support to the Chair and trustees.

Their main functions can be split into three areas of work:

**Operational**

- recommending for approval an annual calendar of meetings;
- proposing and implementing an agreed annual budget;
- ensuring compliance with the legal and regulatory responsibilities of the charity;
- assist the Chair in the recruitment, induction and training of trustees;
- ensuring accounts are audited, presented, approved and submitted in a timely manner and in accordance with legal requirements;
- ensuring the highest standard of probity and due diligence in respect of financial management;
- implementing and delivering the annual audit (if required) and submitting for approval within an agreed time frame the trustees' annual report and accounts to trustees and the required authorities.

**Human Resources (HR)**

- Managing staff according to best practice through sound leadership and management;
- Providing HR policies, principles and practices including training, guidance and written appraisals for each member of staff, grievance and disciplinary procedures etc.;
- Fostering an atmosphere that encourages, retains and motivates staff and volunteers in pursuit of a common goal;
- Proposing a strategic plan and an annual plan with clear objectives;
- Advising on the resources necessary to deliver the agreed objectives.

**Administration**

- Drafting policies and procedures to ensure the smooth running of the charity;
- Monitoring relevant legislation for further consideration;
- Arranging collection of Weekly Maintenance Contributions, maintaining accurate records and ensuring any interruption in payments is investigated and rectified urgently;
- Ensuring the annual budget is implemented and promptly bringing to the attention of trustees any discrepancies or any negative variances;
- Liaising with contractors, obtaining quotes and supervising work, ensuring quality and value for money;
- Arranging payment of utility bills and taxes;
- Preparing reports, annual returns and maintaining accurate records;
- Being responsible for service charges and the proper maintenance of communal facilities;
- Being responsible for the upkeep and condition of the properties and taking steps through quinquennial / stock condition reviews and a strategic plan to implement a maintenance programme according to agreed priorities;
- Ensuring that health and safety is prioritised and regularly reviewed and implemented;
- Liaising with residents' next of kin / doctors / health professionals / local authority and other relevant authorities to ensure the well-being of residents.

**Further resources:**

- ACAS guidance: [ACAS Job Description templates](#)
- ACAS guidance: [ACAS Job application form template](#)
- ACAS guidance: [ACAS Equality and diversity monitoring form template](#)
- ACAS guidance: [ACAS Job offer templates](#)
- Government guidance: [checking a job applicant's right to work](#)
- Government guidance: [find out which DBS check is right for your employee](#)
- Government guidance: [Check someone's criminal record as an employer](#)
- Disclosure & Barring Service: [guide to eligibility](#)
- NACRO: [advice and support for employers re criminal records](#)
- CIPD: [Pre-Employment Checks – Guidance for Organisations](#)
- DBS: [Revised Code of Practice for Disclosure and Barring Service Registered Persons](#)
- ACAS guidance: [ACAS guide to induction](#)
- The Almshouse Association: [Seminars and Training](#)
- The Almshouse Association website: see **Model Equality and Diversity Policy** in [Model Policies and Templates](#)

**5.3 Employment Rights**

- 5.3.1 The charity needs to be aware of and make sure that it complies with all relevant employment legislation.
- 5.3.2 The information in this chapter provides a general overview of applicable employment law, but the charity should always consider taking professional advice to ensure that it is complying fully with its obligations.

**Further resources:**

- The Almshouse Association: [Panel of Consultants](#)

**5.4 Employment Contract**

- 5.4.1 The employees' statutory rights will be supplemented by their employment contract. This is a legally binding agreement between the charity and the employee.
- 5.4.2 The contract will:
- (a) in the case of an incorporated charity, be between the charity and the employee; and
  - (b) in the case of an unincorporated charity, be between the trustees and the employee. If the trustees cannot act as a corporate body (see section 3.4) then the contract should be in the names of all of the individual trustees as opposed to being in the name of the charity.
- 5.4.3 Whilst there is no legal requirement for a written contract of employment, the charity is required to give the employee a written statement of their employment particulars on or before their first day of work<sup>46</sup>. This must include:
- (a) the names of the employer (i.e., the charity or the trustees as appropriate) and the employee;



- (b) the place of work and address of the charity;
  - (c) the job title or a brief description of the work (but not the full job description, as otherwise this becomes part of the contractual document and can be more difficult to change in the future);
  - (d) the date the employment is to begin;
  - (e) the rate of pay and frequency (e.g., weekly or monthly) of payment;
  - (f) the hours of work which will include the normal working hours, the normal working days of the week and whether or how these may vary from time to time;
  - (g) entitlement to holiday and holiday pay;
  - (h) any other benefits (including non-contractual benefits);
  - (i) details of whether the employment is non-permanent (e.g., fixed term contract – but if the contract is only for a fixed term then the charity needs to be aware that the terms cannot be less favourable than the terms for permanent employees<sup>47</sup>);
  - (j) details of any probationary period;
  - (k) details of any collective agreements reached with a trade union;
  - (l) details of any required training and whether or not this is paid for by the charity; and
  - (m) the date for the purposes of assessing the period of continuous employment.
- 5.4.4 At the same time employees must be provided with details of (or details of how to access information on):
- (a) sick leave and pay;
  - (b) any other paid leave; and
  - (c) the length of termination required from the charity / the employee to end their employment.
- 5.4.5 In addition, within two months of starting their employment the employee must be provided with details of (or details of how to access information on):
- (a) pensions and pension schemes (including the auto enrolment obligations);
  - (b) any other training entitlement; and
  - (c) details of the charity's disciplinary and grievance procedures.

**Further resources:**

- ACAS guidance: [What must be written in an employment contract](#)

**5.5 National Minimum Wage and pay**

- 5.5.1 All employees (whether full time or part time) who are over the compulsory school leaving age are entitled<sup>48</sup> to be paid;
- (a) the National Minimum Wage; and
  - (b) individuals who are aged 23 or over are entitled to be paid the National Living Wage.
- 5.5.2 This is the minimum pay per hour employees are entitled to and the applicable rates change on 1 April every year<sup>49</sup>.
- 5.5.3 The National Minimum Wage does not apply to people who are volunteering for the charity or who work on a self-employed basis.



- 5.5.4 If the charity provides an employee with accommodation (whether rent free or otherwise) (see section 5.15) then the charity may offset an amount prescribed by the legislation against the employee's wages when calculating the amount per hour the individual is being paid for the purposes of assessing whether they are paid the minimum wage.
- 5.5.5 If the charity discovers they have paid an employee below the current minimum wage, they must pay the arrears immediately.
- 5.5.6 The charity must keep records to prove they are paying the minimum wage for 6 years from the last day of the pay reference period to which they relate<sup>50</sup>.
- 5.5.7 To check that the minimum wage has been paid correctly the charity can use the Government provided calculator. Specific rules apply relating to what pay is counted for the purposes of the calculation and how the average hourly rate of pay is calculated which are explained in the Government guidance.
- 5.5.8 The charity cannot make any deductions from the employee's pay unless the deduction is either required or authorised by law, or an appropriate provision in the employee's contract (for example an agreement in relation to paying for training or repayment of any advance payments)<sup>51</sup>.
- 5.5.9 Each employee must be provided with an itemised payslip when their wages are paid showing the amount paid and any lawful deductions<sup>52</sup>.
- 5.5.10 The charity is required to pay statutory sick pay to all eligible employees who are sick for at least 4 days in a row (which includes any non-working days), for up to 28 weeks.
- (a) The first three days of any illness are unpaid.
  - (b) The charity can choose to pay sick pay over and above the statutory minimum.
  - (c) If the employee is on long term sickness absence then the charity should consider taking appropriate legal advice about the charity's rights and obligations.
  - (d) The charity should keep appropriate records of employee's sickness absences in case there is any dispute over the payment of statutory sick pay.

**Further resources:**

- Government guidance: [The National Minimum Wage and Living Wage](#)
- Government guidance: [National Minimum Wage and National Living Wage rates](#)
- Government guidance: [National Minimum Wage and Living Wage calculator for employers](#)
- Government guidance: [National Minimum Wage and Living Wage: accommodation](#)
- Government guidance: [Calculating the minimum wage](#)
- Government guidance: [Statutory Sick Pay \(SSP\): employer guide](#)
- Government guidance: [calculate your employee's statutory sick pay](#)

**5.6 Rights in relation to working time**

- 5.6.1 Employees who are over 18<sup>53</sup> cannot be asked to work for more than 48 hours a week on average (including overtime) unless they have formally opted out of this requirement<sup>54</sup>. The average is normally calculated over a period of 17 weeks.
- 5.6.2 In calculating the average hours, the charity needs to:
- (a) include time spent on:
    - (i) job related training;
    - (ii) paid overtime;
    - (iii) unpaid overtime; and



- (iv) time spent on call at the workplace;
- (b) but can exclude:
  - (i) breaks such as lunch breaks;
  - (ii) unpaid overtime where the individual has volunteered to do something (e.g., finish a particular piece of work); and
  - (iii) paid and unpaid holiday.
- 5.6.3 If an individual has more than one job, then their combined working hours should not be more than 48 hours a week on average.
- 5.6.4 An employee, aged over 18, can voluntarily agree to opt out of the 48-hour week arrangements either for a certain period or indefinitely and this should be recorded in writing, for example:
 

*I [employee's name] agree that I may work for more than an average of 48 hours a week. If I change my mind, I will give my employer [amount of time – up to 3 months] notice in writing to end this agreement.*

*Signed:* \_\_\_\_\_ *Dated:* \_\_\_\_\_
- 5.6.5 The charity cannot force an employee to either opt in or opt out of the working time arrangements.
- 5.6.6 If an employee is working during the night, then:
  - (a) they may not be required to work more than an average of 8 hours for each 24-hour period they work; and
  - (b) they are entitled to receive a free health assessment which must be written by a qualified health professional and can be in the form of a questionnaire.
- 5.6.7 In addition, employees over 18 are entitled to:
  - (a) adequate rest breaks and in particular a break of at least 20 minutes if the working day is longer than 6 hours;
  - (b) a rest period of not less than 11 hours in each 24-hour period;
  - (c) a rest period of not less than 24 hours in each 7-day period (but in some cases this can be averaged over two weeks).
- 5.6.8 If an employee is required to be “on-call” then:
  - (a) if they are required to be resident at the charity out of hours and are provided with on-call facilities, they would be considered to be working during the period they are on-call; and
  - (b) if they are not required to be on-site then they are not considered to be working unless they are called to do so, in which case the time they spend working will count towards the working week.
- 5.6.9 The charity must keep records to show that the requirements have been complied with, for a period of two years from the date on which they are made<sup>55</sup>.

#### Further resources:



- Government guidance: [Maximum weekly working hours](#)
- Government guidance: [Night Working Hours – Health Assessments](#)

## 5.7 Leave entitlement

- 5.7.1 Employees are entitled to a minimum of 5.6 weeks of paid annual leave each year. If an employee is working full time, 5 days a week, this equates to 28 days paid annual leave. This entitlement includes 8 days of annual leave which represent the public holidays in England and Wales.





- 5.7.2 A part time worker or an employee who starts work during a leave year is in each case entitled to an equivalent amount of holiday on a pro-rata basis. The appropriate amount of leave can be calculated using the Government calculator<sup>56</sup>.
- 5.7.3 Employees must give notice to take annual leave, in accordance with the terms of their employment contract. If the contract does not contain any notice provisions then the legislation provides that the employee must give twice as many days' notice as the number of days being taken<sup>57</sup>. Employers may also set certain times when holiday is to be taken, for example over Christmas<sup>58</sup>.
- 5.7.4 The charity cannot make a payment in lieu of annual leave to the employee, save when the employee's employment is terminated<sup>59</sup>. Upon termination of their employment an employee is entitled to pay in lieu of any unused statutory entitlement and, in addition, may be entitled to payment in lieu of any unused contractual entitlement, if the contractual entitlement to holiday exceeds the statutory entitlement.
- 5.7.5 In addition, employees will be entitled to:
- (a) statutory maternity pay and leave;
  - (b) statutory paternity pay and leave;
  - (c) statutory adoption pay and leave;
  - (d) statutory shared parental pay and leave;
  - (e) time off for emergencies (e.g., dependants leave);
  - (f) time off for public duties;
  - (g) statutory sick pay; and
  - (h) redundancy pay.

**Further resources:**

- Government guidance: [Holiday entitlement](#)
- Government guidance: [Calculate holiday entitlement](#)
- Government guidance: [UK Bank Holidays](#)
- Government guidance: [Statutory leave and time off](#)
- Government guidance: [Time off for family and dependants](#)
- Government guidance: [Time off work for public duties](#)
- Government guidance: [Maternity pay and leave](#)
- Government guidance: [Paternity pay and leave](#)
- Government guidance: [Adoption pay and leave](#)
- Government guidance: [Shared parental pay and leave](#)
- Government guidance: [Redundancy: your rights](#)

**5.8 Health and Safety**

- 5.8.1 The charity has a legal duty to protect the health, safety and welfare of its employees<sup>60</sup>.
- 5.8.2 The charity must:
- (a) carry out an appropriate assessment of any risks in the workplace; and
  - (b) either display a copy of the approved health and safety poster in the workplace or provide employees with a copy<sup>61</sup>.
- 5.8.3 If the charity has five or more employees it must have a written health and safety policy<sup>62</sup>.



- 5.8.4 There is no legal prohibition against employees working alone, but the charity has a duty to consider the risks of lone working as part of their assessment of any risks in the workplace.

**Further resources:**



- Government guidance: [Health and Safety law poster – free leaflet and pocket card](#)
- Government guidance: [Health and safety regulation ... a short guide](#)
- Government guidance: [Prepare a health and safety policy](#)
- HSE guidance: [protecting lone workers: how to manage the risks of working alone](#)

## 5.9 Flexible working

- 5.9.1 All employees with more than 26 weeks' service have the right to apply for flexible working<sup>63</sup>. This is working in a way that suits the employee's needs, for example having flexible start and finish times or working from home and could include:

- job sharing arrangements;
- working from home;
- part time working;
- compressed hours;
- flexitime;
- annualised hours; and/or
- staggered hours.

- 5.9.2 The charity must deal with all such requests in a reasonable manner.

- 5.9.3 If an employee wishes to apply for flexible working, the following process applies:

- the employee writes to the charity with their request;
- the charity considers the request and must decide within 3 months (unless a longer period is agreed with the employee);
- if the charity agrees to the request the employee's terms and conditions in their employment contract need to be formally amended within 28 days after the request was approved; and
- if the charity disagrees with the request the employee needs to be informed of the business reasons for the refusal. If the employee is not satisfied with the reasons given they are entitled to complain to an employment tribunal.

- 5.9.4 An employee can only make one application a year for flexible working under the statutory process.

**Further resources:**



- ACAS guidance: [ACAS Code of Practice on flexible working requests](#)
- Government guidance: [Flexible working](#)

## 5.10 Equality, diversity and inclusion

- 5.10.1 The charity cannot discriminate against employees on the basis of the protected characteristics, which are:

- age;
- disability;
- gender reassignment;



- (d) marriage and civil partnership;
  - (e) pregnancy and maternity;
  - (f) race;
  - (g) religion and belief;
  - (h) sex; and
  - (i) sexual orientation.
- 5.10.2 The charity also has obligations to any employee who suffers from a disability to make reasonable adjustments (such as providing appropriate aids or equipment) to enable them to carry out their job. A disability means:
- (a) they have a physical or mental impairment; and
  - (b) the impairment has a substantial and long-term adverse effect on their ability to perform normal day to day activities.
- 5.10.3 The charity is required to pay men and women equal pay if they are doing the same or similar work<sup>64</sup>.
- 5.10.4 The charity must not treat part-time workers<sup>65</sup> or those on fixed-term contracts<sup>66</sup> less favourably than those who are employed full time unless the differences can be justified objectively. For example:
- (a) they should receive the same level of pay as full-time workers;
  - (b) they should be entitled to attend the same training (and arrangements made to avoid them being excluded if this takes place at times when they are not working);
  - (c) they should receive the same benefits.

**Further resources:**

- Government guidance: [Disability Confident and CIPD: guide for line managers on employing people with a disability or health condition](#)
- ACAS guidance: [ACAS: Equal Pay](#)
- ACAS guidance: [ACAS: Part-time workers](#)
- Equality & Human Rights Commission: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)
- Government guidance: [Fixed-term employment contracts](#)

**5.11 Pensions**

- 5.11.1 Every employer must make a workplace pension scheme available for eligible employees<sup>67</sup> and all employees must be automatically enrolled unless they opt out of the scheme. This is referred to as “auto-enrolment”.
- 5.11.2 An employee is eligible if they:
- (a) are not already enrolled in a qualifying workplace pension scheme;
  - (b) are aged between 22 and the state pension age; and
  - (c) earn above the pensions earning limit set each year.
- 5.11.3 The charity and the employee will each need to contribute to the scheme at the minimum level prescribed by law.

**Further resources:**

- Government guidance: [Set up and manage a workplace pension scheme](#)
- The Pensions Regulator: [Automatic enrolment – workplace pension duties](#)

## 5.12 Performance management, disciplinary and grievance procedures and dismissal

- 5.12.1 It is good practice for each employee to have a designated line manager. For most employees this will be the most senior employee, but for the most senior employee it is likely to be the Chair of trustees (or another nominated trustee).
- 5.12.2 The employee's performance should be reviewed in regular one to one meetings and appropriate targets and objectives should be set as part of providing support, training and development. The employee should have a regular formal appraisal to discuss overall performance and provide feedback in a non-disciplinary manner.
- (a) Appraisals should not be confused with disciplinary interviews.
  - (b) Employees should be given advance notice of appraisals and given the opportunity to prepare fully and think about ways in which both the job and their performance can be improved.
  - (c) The charity should keep a note of the appraisal and the main points discussed, along with details of any agreed action points.
- 5.12.3 When performance issues are identified steps should be taken to resolve the issues and put in place an appropriate plan with timescales. In such cases it is appropriate for the plan to be put in writing and signed by both the charity and the employee, with a clear record of expected outcomes and expectations.
- 5.12.4 The charity should have a clear policy setting out the steps that will be followed by the charity in the event that any disciplinary steps are to be taken. If the matter cannot be resolved informally then it will be necessary to follow a formal process as set out in the charity's policy.
- 5.12.5 The charity should also have a clear grievance policy setting out the steps that the employee must follow if they wish to take out a formal grievance against the charity. Any grievances should be dealt with in accordance with the policy and should be dealt with promptly.
- 5.12.6 Before dismissing an employee for any reason, the charity should consider taking appropriate professional advice.
- 5.12.7 An employee cannot be dismissed or subjected to a disciplinary procedure solely because they make a "protected qualifying disclosure", this is referred to as "whistleblowing"<sup>68</sup>. In order to be protected the employee must be making a disclosure that is in the public interest and relates to:
- (a) a criminal offence, for example fraud;
  - (b) someone's health and safety are in danger;
  - (c) risk or actual damage to the environment;
  - (d) a miscarriage of justice;
  - (e) the charity is breaking the law; or
  - (f) someone is covering up in relation to wrongdoing.

### Further resources:



- ACAS guidance: [ACAS Code of Practice on disciplinary and grievance procedures](#)
- ACAS guidance: [ACAS guide to discipline and grievances at work](#)
- The Almshouse Association: [Panel of Consultants](#)
- ACAS guidance: [ACAS guidance on dismissals](#)
- Government guidance: [Whistleblowing for employees](#)



### **5.13 Ending an employee's employment**

- 5.13.1 An employee's employment with the charity may be terminated voluntarily or it may be necessary for the charity to take steps to terminate the employment. In each case the termination should be dealt with in a dignified manner.
- 5.13.2 If the employee decides to terminate their employment, they will need to notify the charity that they have resigned and, normally, their employment contract will require this to be done in writing. If an employee resigns the charity should confirm the resignation in writing and detail when the employment will come to an end and any formalities that the employee needs to comply with at the end of their employment. The employee's employment contract will normally stipulate how much notice the employee will need to give.
- 5.13.3 If the charity decides to terminate the employee's employment it will need to give either contractual notice (as stated in the employment contract) or statutory notice, whichever is the greater. If the employee has less than 2 years' service the statutory notice period is one week, but in all other cases it is one week per full year of service up to a maximum of 12 weeks. Notice is not required if the employee's fixed term contract has expired, or they have been dismissed for gross misconduct under a formal disciplinary procedure.
- 5.13.4 If an employee leaves the charity's employment it is sensible to carry out an exit interview to find out more about how the charity can improve its workplace and, potentially, improve staff retention. An exit interview should usually be carried out by somebody impartial within the charity and not the person who has been responsible for line managing the individual.
- 5.13.5 There is no longer any statutory age for retirement. The charity must not put pressure on any employee to retire at a certain age as this would be unlawful age discrimination. If the individual employee is no longer able to perform their role then this needs to be managed in the same way as any other employment issue.

### **5.14 Policies**

- 5.14.1 The charity should create an employee handbook and also put in place appropriate policies to cover most day-to-day situations.
- 5.14.2 Policies should be created in plain English, be relevant to the charity's particular circumstances and be proportionate. In particular, the charity should ensure that it follows its own policies consistently.
- 5.14.3 In many cases sample or template policies can be located online, but in each case the charity should ensure that the policy is suitable for its own needs and, if any part of a template policy is not understood, appropriate professional advice should be taken.
- 5.14.4 Policies that the charity may wish to have include:
  - (a) Adoption leave and pay;
  - (b) Adverse weather and travel disruption;
  - (c) Anti-harassment and bullying;
  - (d) Compassionate leave;
  - (e) Disciplinary;
  - (f) Emergency or dependants leave;
  - (g) Equal opportunities;
  - (h) Expenses;
  - (i) Flexible Working; and
  - (j) Grievance.



## 5.15 Service Occupancy

5.15.1 A service occupancy will:

- (a) arise when a charity requires an employee to reside in property provided by the charity for the better performance of the individual's duties; and
- (b) gives the employee a personal licence to occupy the relevant property for so long as the employee is employed by the charity (and the licence will terminate automatically when the employment comes to an end).

5.15.2 In order for there to be a service occupancy, the occupation must be essential for the performance of the employee's duties or the individual's employment contract must expressly require the employee to live at the property for the better performance of their duties.

5.15.3 An almshouse cannot be used for the purposes of a service occupancy, unless this is provided for in the Governing Document (i.e., this would breach the trusts on which the almshouses are held).

5.15.4 If an individual fails to vacate a property provided on a service occupancy at the end of their employment, then the individual will need to be given 4 weeks' written notice to vacate the property following which court proceedings would need to be taken to gain possession<sup>69</sup>.

5.15.5 The provision of a service occupancy arrangement falls outside of the legislation on the disposal of charity land. However, if the arrangement is not a true service occupancy arrangement and is considered to be a tenancy arrangement, this would currently require Charity Commission consent<sup>70</sup> (but this will change when the relevant provisions of the Charities Act 2022 are implemented).

5.15.6 The charity should also take advice on the potential tax implications of providing accommodation and whether it will be treated for tax purposes as a benefit in kind.

## 5.16 Volunteers

5.16.1 Volunteers are not employees and do not come within the remit of employment legislation, with a few limited exceptions (e.g., in relation to health and safety).

5.16.2 The charity should, however, ensure that its public liability and employer's liability insurance policies extend to cover those who volunteer for the charity.

5.16.3 If the charity has regular volunteers it should ensure that they are properly inducted and briefed on the charity's policies that may apply to their volunteering. In particular, the charity should have a volunteer policy that covers how the charity:

- (a) recruits volunteers;
- (b) treats volunteers with fairness and equity;
- (c) makes roles accessible to all volunteers;
- (d) inducts and trains volunteers;
- (e) pays expenses;
- (f) supervises and supports volunteers;
- (g) provides for the health and safety of volunteers;
- (h) deals with issues of confidentiality and data protection; and
- (i) deals with any problems and complaints from volunteers.

### Further resources:



- The Almshouse Association website: see **Managing Volunteers Model Policy** in [Model Policies and Templates](#)



## CHECKLIST – EMPLOYEES

- ☒ If required, have DBS checks been carried out on all employees?
- ☒ Do all employees have a written contract of employment?
- ☒ Have all employees been provided with information on sick leave and pay, paid leave and termination rights?
- ☒ Have all employees been provided with information on pensions, training entitlements (if any) and details of the charity's disciplinary and grievance procedures?
- ☒ Are all employees over the compulsory school leaving age paid the minimum wage?
- ☒ Does the charity have records to show that all relevant employees are paid the minimum wage?
- ☒ Have any employees been asked to opt out of the working time regulations?
- ☒ Is a health assessment available for any employees who work nights?
- ☒ Does the charity have records to show that it is has complied with its obligations on working hours?
- ☒ Do all employment contracts confirm the notice periods required to take leave?
- ☒ Has the charity carried out an appropriate assessment of the risks in the workplace?
- ☒ Has the charity displayed the health and safety poster in the workplace?
- ☒ If the charity has more than 5 employees, does it have a written health and safety policy?
- ☒ Does the charity have a flexible working policy?
- ☒ Are male and female employees paid equal pay for doing the same or similar work?
- ☒ Have all employees been auto enrolled into a pension, unless they have opted out?
- ☒ Do all employees have a designated line manager?
- ☒ Are regular performance reviews carried out?
- ☒ Does the charity have a clear disciplinary policy?
- ☒ Does the charity have an up-to-date employee handbook and suite of relevant policies?
- ☒ Have any service occupancy arrangements been put in place and, if so, are these properly documented?
- ☒ Does the charity have an appropriate volunteer policy?

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### References:

- <sup>36</sup> Section 177 of the Charities Act 2011.
- <sup>37</sup> Equality Act 2010.
- <sup>38</sup> Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.
- <sup>39</sup> Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- <sup>40</sup> Equal Pay Act 1970.
- <sup>41</sup> Immigration, Asylum and Nationality Act 2006.
- <sup>42</sup> Section 60(1) of the Equality Act 2010.
- <sup>43</sup> Section 5 of the Safeguarding Vulnerable Groups Act 2006.
- <sup>44</sup> See the General Data Protection Regulation, the Data Protection Act 2018 and section 124 of the Police Act 1997.



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- 45 See the Code of Practice issued by the Disclosure and Barring Service under section 116A of the Police Act  
1997.
- 46 Section 1 of the Employment Rights Act 1996.
- 47 The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 48 National Minimum Wage Act 1998.
- 49 The National Minimum Wage Regulations 2015.
- 50 Regulation 59(8) of The National Minimum Wage Regulations 2015 as amended by the National Minimum  
Wage (Amendment) Regulations 2021.
- 51 Section 13 of the Employment Rights Act 1996.
- 52 Section 8 of the Employment Rights Act 1996.
- 53 Different rules apply to individuals who are under 18 and specialist advice should be taken.
- 54 The Working Time Regulations 1998.
- 55 Regulation 9(b) of The Working Time Regulations 1998.
- 56 <https://www.gov.uk/calculate-your-holiday-entitlement>.
- 57 Regulation 15(4) of The Working Time Regulations 1998.
- 58 Regulation 15(2) of The Working Time Regulations 1998.
- 59 Regulation 13(9) of The Working Time Regulations 1998.
- 60 Section 2 of the Health and Safety at Work etc. Act 1974.
- 61 The Health and Safety Information for Employees Regulations 1989.
- 62 Section 2(3) of the Health and Safety at Work etc. Act 1974.
- 63 The Flexible Working Regulations 2014.
- 64 Equal Pay Act 1970.
- 65 The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.
- 66 The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 67 Pensions Act 2008.
- 68 Public Interest Disclosure Act 1998.
- 69 Section 5 of the Protection from Eviction Act 1977.
- 70 See section 117 and section 118(2)(d) of the Charities Act 2011.





## 6 SAFEGUARDING

### 6.1 Introduction

- 6.1.1 Safeguarding should be a governance priority for all charities and is a fundamental part of demonstrating that a charity is operating for the public benefit.
- 6.1.2 Every charity should have a strong safeguarding culture that aims to:
- (a) protect beneficiaries, volunteers, staff, trustees and anyone who comes into contact with the charity;
  - (b) minimise the risks of harm or abuse to such individuals;
  - (c) give confidence to all that any concerns raised will be dealt with appropriately; and
  - (d) ensure that everyone involved in the charity, at whatever level or in whatever role, understands their responsibilities.
- 6.1.3 Although residents occupying almshouses are expected to be able to live independently ([see section 10.11](#)), it is a recognised fact that providers of social housing have a key role to play in identifying and preventing abuse, alongside social care providers, health services and the police.
- 6.1.4 In the main residents will be adults, therefore this chapter focuses on safeguarding duties in relation to adults at risk. Each charity should, however, consider the extent to which children engage with its services.
- 6.1.5 Safeguarding is the responsibility of all involved with the charity and is not the sole responsibility of the trustees.

### 6.2 Trustee Duties

- 6.2.1 The trustees must identify the potential safeguarding risks that relate to the charity and carry out an appropriate risk assessment.
- (a) In most almshouse settings this is likely to relate to safeguarding adults at risk ([see section 6.4](#)).
  - (b) However, it is important to remember that safeguarding goes further than just considering beneficiaries and covers all individuals who come into contact with the charity. It would also include, for example, trustee behaviour that might be perceived as bullying towards other trustees, volunteers or staff.
- 6.2.2 Whilst safeguarding responsibility sits with all trustees, it is appropriate to appoint a lead safeguarding trustee to act as the point of contact for safeguarding issues. The lead safeguarding trustee should receive training appropriate to their role.
- 6.2.3 The trustees must ensure that the charity has robust safeguarding policies in place to deal with safeguarding incidents, including making sure that everyone associated with the charity knows how to identify and report concerns and/or incidents.
- 6.2.4 The trustees should ensure that all staff and volunteers have received appropriate training and are kept up to date with recent developments and new/updated guidance.
- 6.2.5 The safeguarding policy should ideally:
- (a) set out the charity's statutory responsibilities in relation to safeguarding and summarise the steps that the charity will take to keep people safe;
  - (b) detail the potential signs and indicators of abuse, and how abuse can be identified;
  - (c) cover the charity's training arrangements for trustees, staff and residents;
  - (d) detail how concerns or disclosures of abuse are to be raised and with whom;
  - (e) set out the duties of the designated safeguarding lead within the charity and their contact details;



- (f) detail how on-going issues will be monitored and reported to trustees;
  - (g) contain contact details for the relevant local authority agencies; and
  - (h) set out the charity's approach to supporting victims.
- 6.2.6 The trustees should ensure that the appropriate checks have been carried out on all trustees, volunteers and staff ([see section 5.2.6\(c\)](#)) relevant to their roles within the charity.
- 6.2.7 In addition to the core safeguarding policy, the charity should also have appropriate policies to protect volunteers and staff dealing with bullying and harassment and whistleblowing. Trustees should make it clear to all associated with the charity, that such behaviour is not acceptable and that if it occurs between members of staff and/or volunteers it will be treated as a disciplinary matter. The Charity Commission also expects charities to put in place a Code of Conduct (the “**Code of Conduct**”) which sets out behaviour expectations and the consequence of breaching the Code of Conduct.
- 6.2.8 The trustees should ensure that the charity is properly insured in relation to potential safeguarding risks.
- 6.2.9 If an issue arises, the charity should follow its safeguarding policy, and in particular make sure that:
- (a) the issue is reported to all the appropriate authorities (including making a serious incident report to the Charity Commission ([see section 7.19](#));
  - (b) if the matter is reported to the police or the local authority, then the charity should simply record information provided by residents, but should not carry out a more detailed investigation unless asked to do so by the police or the local authority;
  - (c) the issue is dealt with in an appropriate and professional manner ensuring that the charity avoids making any assumptions or accusations that are unsupported by evidence;
  - (d) the charity keeps clear records of how the incident is dealt with, which are kept in a secure manner and in accordance with the charity's data protection policies ([see section 15](#)) and recommendations on retention of records from the Information Commissioner's Office;
  - (e) the issue is dealt with promptly to prevent further harm; and
  - (f) the charity considers any improvements or changes that should be made to their safeguarding policies and procedures in light of the incident that has occurred.
- 6.2.10 The trustees should be familiar with the details of their local authority Safeguarding Adults Board.

#### Further resources:



- The Almshouse Association: [Safeguarding Training programme](#)
- The Almshouse Association: see **Model Safeguarding Policy** in [Model Policies and Templates](#)
- Charity Commission guidance: [Safeguarding for charities and trustees](#)
- Charity Commission guidance: [Safeguarding and protecting people for charities and trustees](#)
- Charity Commission guidance: [10 actions trustee boards need to take to ensure good safeguarding governance](#)
- [NCVO Safeguarding Resource](#)

### 6.3 Safeguarding in an almshouse setting

- 6.3.1 There is a need to maintain a balance between respecting individuals' rights to live independently and dealing with issues that may involve safeguarding. In doing so the charity has to be careful to avoid overstepping the mark and becoming involved in regulated activity relating to care ([see section 14](#)) or accepting a greater duty of care in relation to a resident.
- 6.3.2 However, charities who provide almshouse accommodation have a key role to play in relation to adult safeguarding, working in collaboration with social care services, health services and the police. When

engaging with residents who may be adults at risk ([see section 6.4](#)) the charity must follow the statutory guidance<sup>71</sup>.

- 6.3.3 The charity may well be the first organisation that becomes aware of an individual developing care and support needs as a result of age, disability or illness. In addition, the charity will be able to pick up on signs of abuse and/or neglect from engagement with residents and through dealing with complaints of anti-social behaviour by residents or staff towards other residents. The charity may also be able to identify financial abuse if residents are found to be in arrears with their weekly maintenance contribution ([see section 9](#)).
- 6.3.4 The charity is well placed to identify residents who are at risk of abuse, and then work with the appropriate authorities to resolve the issue. In order to fulfil this role:
- trustees, staff and volunteers need to know the residents and understand what constitutes abuse and the signs to look for;
  - the charity needs to have a good working relationship with the local social care support teams and facilitate residents seeking support when needed;
  - the charity should raise awareness with residents about how to identify abuse and how to deal with it;
  - the charity should ensure that poor practice and low-level breaches of their Code of Conduct are being effectively reported and addressed; and
  - the charity should have in place proper systems that enable it to react appropriately when it identifies residents at risk and empower staff and volunteers to take a proactive approach towards safeguarding residents.
- 6.3.5 There may be situations where the local authority may be reluctant to get involved in addressing issues and understanding the local authority's duties ([see section 6.4 below](#)) will assist in ensuring that the relationship is positive and that both the local authority and the charity understand their own responsibilities and obligations.

#### Further Resources:



- Social Care Institute for Excellence guidance: [Safeguarding adults for housing staff](#)
- Social Care Institute for Excellence guidance: [types and indicators of abuse](#)
- Department of Health and Social Care guidance: [Care and support statutory guidance](#)

## 6.4 Safeguarding adults at risk

- 6.4.1 Local authorities have a duty to protect an adult's right to live in safety, free from abuse and neglect. The local authority must act<sup>72</sup> (even if they are not providing any care or support services to an individual) if it has reasonable cause to suspect that an adult is at risk in its local area, which means an adult who:
- has needs for care and support (whether or not the local authority is currently meeting any of those needs);
  - is experiencing, or is at risk of, abuse or neglect; and
  - as a result of those needs is unable to protect themselves against the abuse or neglect or the risk of it.
- 6.4.2 The local authority must also follow the statutory guidance in relation to adult safeguarding<sup>73</sup> which confirms the obligation to safeguard adults in a way that supports them in making choices about how they want to live.
- 6.4.3 The guidance establishes six key principles in relation to adult safeguarding:



- |     |                        |  |
|-----|------------------------|--|
| (a) | <b>EMPOWERMENT</b>     | individuals should be support and encouraged to make their own decisions and informed consent;   |
| (b) | <b>PREVENTION</b>      | it is better to act before harm occurs;  |
| (c) | <b>PROPORTIONALITY</b> | the least intrusive response appropriate to the risk present;  |
| (d) | <b>PROTECTION</b>      | support and representation for those in greatest need;   |
| (e) | <b>PARTNERSHIP</b>     | local solutions through services working with their communities. Communities have a part to play in preventing, detecting and reporting neglect and abuse; and |
| (f) | <b>ACCOUNTABILITY</b>  | accountability and transparency in delivering safeguarding.  |

6.4.4 There are many different types of abuse and neglect, falling into the following categories (this list is not an exhaustive list):

- (a) physical abuse;
- (b) domestic violence;
- (c) sexual abuse;
- (d) psychological abuse;
- (e) financial or material abuse (which includes having money or other property stolen, being defrauded, being put under pressure in relation to money or other property, or having money or other property misused<sup>74</sup>);
- (f) modern slavery;
- (g) cyber abuse;
- (h) discriminatory abuse; and/or
- (i) self-neglect.

**Further resources:**



- Social Care Institute for Excellence guidance: [Safeguarding adults](#)
- Social Care Institute for Excellence guidance: [Preventing abuse and neglect of adults with care and support needs](#)
- NHS guidance: [Abuse and neglect of vulnerable adults](#)
- [NHS Social Care and Support Guide](#)

## 6.5 Sharing information with third parties

6.5.1 There may be circumstances, when an adult is at risk, where the charity needs to decide as to whether or not to share information with a third party (e.g., the local authority). This often raises difficult issues. Where possible information should only be shared with a third party if the resident has given explicit consent to the sharing of information. This is consistent with the key principle of empowerment (see [section 6.4.3\(a\)](#)).

6.5.2 All individuals are assumed to have mental capacity to make decisions unless there is clear evidence to the contrary<sup>75</sup>. The fact that an individual may choose to make a bad decision, does not mean that they lack capacity. When dealing with residents in relation to safeguarding matters, the charity should always aim to provide the resident with sufficient information in an appropriate fashion to enable residents to make an informed decision. If a resident is considered to lack capacity, the charity should liaise with whoever has responsibility to make decisions on behalf of the resident in those circumstances. If the charity is unable to identify an appropriate individual, then the charity should consider discussing the position with the local authority without disclosing the identity of the resident and seek guidance on how to proceed. It is important to note that an individual may have capacity to make some decisions but not others, or their capacity may come and go.



- 6.5.3 All individuals are entitled, as a human right, to respect for their private life<sup>76</sup>. This right can only be interfered with if the interference can be justified and is for a particular purpose, for example to protect someone's health or to prevent a crime being committed.
- 6.5.4 In addition, whilst information about an individual's health is personal information (see section 15.2.4) protected by legislation<sup>77</sup>, personal data can be shared if it is considered to be in the public interest to safeguard an individual's life. However, before proceeding to share information on this basis it is necessary to be certain there is no other way to prevent the harm and the decision must be fully justified and properly documented.
- 6.5.5 The charity may disclose information to the police, local authorities and health authorities if the disclosure is necessary in certain circumstances to prevent or reduce crime or disorder<sup>78</sup>.
- 6.5.6 If at any point the charity decides to share information with third parties, without getting a resident's consent, the charity should:
- (a) first seek advice from the local authority or police or a professional advisor, without disclosing personal details of the resident; and
  - (b) if the charity decides to proceed:
    - (i) it should inform the resident that it is taking this step (unless doing so would increase the risk of harm to the individual);
    - (ii) it should base the decision on the safety and wellbeing of the resident;
    - (iii) it should only disclose such information as is necessary, proportionate, relevant and accurate, and such disclosure should be on a secure basis; and
    - (iv) it should keep a record of the justification for making any disclosure.

**Summary of procedure for dealing with safeguarding issue involving a resident**

- (1) Assess the situation calmly. Try not to show any signs of shock or disbelief.
- (2) Consider whether the emergency services or any form of medical assistance are required.
- (3) Ensure the safety and wellbeing of the resident and seek to reassure them. Listen carefully and acknowledge your concern for what has happened.
- (4) Find out the resident's views and wishes about the issue and the procedure to be followed.
- (5) Explain to the resident what you are going to do.
- (6) Gather the facts by making a written record of what the resident had told you, using their own words and also noting what you have seen and the actions you have taken.

**DO NOT CARRY OUT ANY FORM OF INVESTIGATION**

**DO NOT CONFRONT THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE ABUSE**

**AS A CRIME MAY HAVE BEEN COMMITTED**

Simply seek to establish:

- (a) the date, time and place of the alleged abuse;
- (b) the name of the abused (and the person making the complaint if they are not the resident themselves);
- (c) the nature of the abuse (in the resident's own words);
- (d) a description of any injuries;
- (e) whether there are any concerns about the mental capacity of the resident and, if so, whether an independent advocate is required to be present;
- (f) whether the resident or any other individuals remain at immediate risk from the individual alleged to have carried out the abuse;



	(g) consent from the resident to share information (but making it clear that you are required to share information in any event).
(7)	If the complaint is reported to a member of staff, the lead safeguarding trustee should be informed immediately and be responsible for ensuring compliance with the charity's safeguarding policy.
(8)	Take steps to preserve all evidence (including photographs of any injuries where the resident has given consent for photographs to be taken).
(9)	If the resident or any other individual is in immediate danger, phone the police on 999. If there is no immediate danger, then report to the local authority safeguarding adults board and seek advice on the next steps.
(10)	Make a serious incident report to the Charity Commission.

## 6.6 Professional Boundaries

- 6.6.1 Whilst the charity, and in particular the trustees and staff, should have a good relationship with residents and seek to facilitate the provision of safe, effective, accessible, supportive and caring services, care should be taken to avoid:
- (a) the charity inadvertently straying into the provision of regulated activities relating to care ([see section 14](#));
  - (b) the charity taking on a responsibility of a duty of care to the resident beyond the usual duty owed to any beneficiary of the charity; and
  - (c) trustees, staff and/or volunteers developing inappropriate relationships with residents (a robust Code of Conduct will help trustees, staff and/or volunteers to understand boundaries and what is and is not acceptable behaviour).
- 6.6.2 The charity needs to be careful to set clear boundaries so that trustees, staff, volunteers and residents are able to raise issues of concern in an open and professional manner. At no point should residents be made to feel subordinate to trustees, staff and/or volunteers. The relationship with residents should be based on trust, respect and the appropriate use of power, to avoid any allegations of abuse in any form.
- 6.6.3 Where residents are considered to be adults at risk, or issues are being discussed that may be considered to be intrusive into the individual's personal life, it would be appropriate to ensure that:
- (a) the resident is always offered the opportunity to have family, friends or an advocate present for such discussions; and
  - (b) the charity is represented by more than one person so that accurate notes can be kept of any conversation.
- 6.6.4 Trustees, staff and volunteers should be trained in the appropriate professional boundaries, including:
- (a) the difference between effective communication / signposting, and inappropriate counselling or advice;
  - (b) not exerting inappropriate influence or imposing personal views or prejudices;
  - (c) maintaining confidentiality and privacy (in compliance with data protection legislation);
  - (d) avoiding inappropriate physical contact;
  - (e) not accepting gifts or money or entering into financial transactions of any sort;
  - (f) not developing inappropriate relationships with residents;
  - (g) not allowing unauthorised use of workplace facilities or equipment; and
  - (h) understanding the appropriate use of the internet or social media.
- 6.6.5 Trustees, staff and volunteers may from time to time find themselves in a position where they are drawn into situations where the professional boundaries with residents may be stretched or even crossed. The charity should have a clear policy (in the Code of Conduct) about how trustees, staff and/or volunteers

should behave in such circumstances to obtain appropriate guidance, and how any situation should be documented for future reference.

## **6.7 Gifts and legacies to trustees, staff, volunteers and/or the charity**

- 6.7.1 The charity should be careful to avoid any allegations of financial abuse and, for those reasons, it would be appropriate to have a clear policy that:
- (a) any gifts from residents to trustees should always be refused; and
  - (b) any financial gifts from residents to staff and/or volunteers should be refused but that small tokens of gratitude which are under a de minimis level clearly set out in the Residents' Handbook ([see section 10.16](#)) may be permitted provided they are declared to the trustees. Gifts of this nature should, however, be discouraged.
- 6.7.2 Occasionally residents may wish to leave a legacy to the charity and/or to individual trustees, members of staff or volunteers. If a resident indicates their intention to leave such a legacy, then the trustees should discourage the resident from taking this step but should not seek to advise the resident as to how they dispose of their estate. In each case the trustees should advise the resident to take independent legal advice and/or to discuss the position with their family. The trustees should record this recommendation in writing, so that the position is documented for the future.
- 6.7.3 Members of staff and/or volunteers should be trained that if a resident indicates an intention to leave them a legacy they should politely decline and explain to the resident that they will need to mention the position to the trustees.
- 6.7.4 If the charity does receive a legacy from a resident then the charity cannot refuse the legacy, as this would be viewed as an ex-gratia payment (i.e., foregoing a legal entitlement of the charity). In order to refuse the legacy, the charity would need the Charity Commission to authorise the waiver of the legacy, as an ex-gratia payment<sup>79</sup>. (The position around ex-gratia payments will change in the future when the relevant sections of the Charities Act 2022 are brought into force.)
- 6.7.5 If a resident receives an unexpected windfall that alters their financial circumstances, such that they no longer qualify to be a resident (see section 10.3), the resident may consider transferring all or part of the funds to the charity in order that they can remain in the almshouse. The charity should not encourage this action and should take its own legal advice as well as advising the resident to take independent legal advice.

### **Further resources:**



- Charity Commission guidance: [Ex gratia payments by charities \(CC7\)](#)



## CHECKLIST – SAFEGUARDING

- ☒ Does the charity have a strong safeguarding culture?
- ☒ Does the charity engage with children as part of its activities?
- ☒ Has the charity carried out a thorough assessment of safeguarding risks, in particular risks relating to residents?
- ☒ Who is the lead safeguarding trustee?
- ☒ Have all trustees, staff and volunteers had appropriate safeguarding training?
- ☒ Does the charity have an up-to-date safeguarding policy and Code of Conduct?
- ☒ Have all relevant DBS checks been carried out?
- ☒ Does the charity have a policy to deal with bullying, harassment and/or whistleblowing?
- ☒ Do all trustees, staff and volunteers know how to report a safeguarding incident?
- ☒ Does the charity have the contact details of the local authority Safeguarding Adults Board?
- ☒ How do you identify an adult at risk?
- ☒ Is the charity clear when information relating to a safeguarding incident can be shared with third parties if the individual involved has not given consent?
- ☒ Does the Residents' Handbook clearly set out the charity's policy on gifts to trustees, staff and/or volunteers?

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### References:

- <sup>71</sup> [Care and support statutory guidance.](#)
- <sup>72</sup> *Section 42 – 46 of the Care Act 2014.*
- <sup>73</sup> [Care and support statutory guidance.](#)
- <sup>74</sup> *Section 42(3) of the Care Act 2014.*
- <sup>75</sup> *Mental Capacity Act 2005.*
- <sup>76</sup> *Article 8 of the European Convention on Human Rights, The Human Rights Act 1998.*
- <sup>77</sup> *The Data Protection Act 2018 and the General Data Protection Regulation.*
- <sup>78</sup> *Section 115 of the Crime and Disorder Act 1998.*
- <sup>79</sup> *Section 106 of the Charities Act 2011.*





## 7 RISK MANAGEMENT

### 7.1 Introduction

- 7.1.1 The trustees are required to carry out an assessment of the risks facing the charity and put in place appropriate plans to manage, review and monitor those risks. The legal obligations are set out in more detail below.
- 7.1.2 The trustees should have an appropriate risk framework that enables them to:
- (a) identify the major risks faced by the charity;
  - (b) decide how to deal with those risks; and
  - (c) supports the making of an appropriate statement regarding risk management in the trustees' annual report (see section 7.2.2).
- 7.1.3 In this chapter, where it refers to the "charity", this should be read as the charity and the trustees. If the charity is established as a corporate entity (see section 3.2), responsibility and liability for risks can be imposed on the trustees if they had consented to the act or omission that caused the incident or neglected to take appropriate steps. If the charity is unincorporated (see section 3.2) then the trustees will be directly responsible for all issues.

### 7.2 Risks

- 7.2.1 Risk management goes wider than just consideration of health and safety issues. Trustees need to consider not just immediate risks to residents, but also the potential threats to the charity's ability to continue to meet the needs of its beneficiaries now and in the future. Risk therefore needs to be considered within the context of the wider social and economic climate that the charity is operating in. Risk will include, amongst other things:
- (a) the risks arising from a failure to maintain or repair the almshouses;
  - (b) the risks arising from failure to invest the charity's capital in well performing financial investments.
- 7.2.2 The trustees are required by law to include a risk management statement in their trustees' annual report (see section 8.4) which states "*whether the charity trustees have given consideration to the major risks to which the charity is exposed and satisfied themselves that systems or procedures are established in order to manage those risks*"<sup>80</sup>.
- 7.2.3 The risks a charity faces will vary depending upon its size, scope of operations and locations. However, risks can be broadly grouped into the following categories:
- (a) governance risks;
  - (b) operational risks;
  - (c) financial risks;
  - (d) external risks (which may include public opinion, relationship with third parties, pandemics etc.); and
  - (e) risks of failing to comply with law and regulation.
- 7.2.4 It is not possible to eliminate all risks and, therefore, the trustees need to assess each risk faced by the charity and then determine an appropriate course of action based upon that assessment.
- 7.2.5 There are essentially four types of action that the trustees can take in relation to any risk:
- (a) **TRANSFER:** the trustees can decide to mitigate the impact to the charity by transferring the impact of the risk to a third party. For example, this can be done either by insuring against a particular outcome (thereby transferring the financial risk but the trustees would remain primarily responsible for the risk), or by perhaps outsourcing the activity to a

- third-party provider who takes on the activity directly and the responsibility for the associated risk.
- (b) **TERMINATE:** the trustees can decide to stop carrying out a particular activity, so as to avoid the potential risk associated with the activity. For example, the trustees could stop carrying out a particular communal activity for residents.
- (c) **TREAT:** the trustees can take steps to reduce the risk. For example, the trustees can have a programme of planned maintenance to carry out repairs to the almshouse.
- (d) **TOLERATE:** the trustees can accept that a risk cannot be eliminated but still needs to be considered. For example, if the almshouse has a very old staircase that cannot be repaired for heritage reasons, it might be appropriate to place a notice on the staircase advising users to take care and drawing their attention to the risk.
- 7.2.6 The trustees should have an appropriate risk management policy that identifies all of the potential risks that the charity faces, assesses the likely severity of those risks and sets out the appropriate steps that the trustees intend to take to manage those risks.
- (a) In preparing the policy the trustees should consult with all key stakeholders, from staff, volunteers, residents and appropriate third parties, to have a clear overview of all the risks faced by the charity.
- (b) This policy should be a “live” document that the trustees review on a regular basis and risk (in particular health and safety) should be a standing item on the agenda for each trustee meeting. Trustees should be able to see changes in the charity’s risk profile and take steps to manage the changes appropriately.
- (c) Where risks have been identified as being significant, and plans put in place to manage the risk, the trustees should monitor the situation to ensure that the risk is being reduced in line with their plan.
- (d) The Charity Commission guidance (“Charities and Risk Management (CC26)”) provides detailed guidance on how to prepare a risk management policy and information on how to identify and assess risks.
- 7.2.7 In relation to some of the more serious risks The Almshouse Association would recommend that a charity consider having in place a disaster recovery plan. For example, what would the charity plan to do if the almshouse were severely damaged by a fire or a flood. Any plan that is put in place should be reviewed regularly and tested from time to time to ensure that it remains appropriate. In particular staff should be trained on the requirements of the plan.

#### Further resources:



- Charity Commission guidance: [Charities and Risk Management \(CC26\)](#)
- Institute of Risk Management: [Charities Special Interest Group publications](#)
- The Almshouse Association Model Template - **Risk Policy and Register** in [Model Policies and Templates](#)
- The Almshouses Association Model Template – **Disaster Recovery Plan** in [Model Policies and Templates](#)

### 7.3 Health and Safety

- 7.3.1 One primary area of risk for charities is in relation to health and safety, which is covered through extensive legislation that is enforced by the Health and Safety Executive (“HSE”).
- 7.3.2 Protecting the health and safety of staff, volunteers, residents and members of the public (including contractors on site at the charity’s premises) who engage with the charity, is an essential part of the



charity's risk management. If an incident occurs due to the failure by the charity to comply with its common law and statutory obligations, the potential fines can be substantive.

- 7.3.3 In particular, the legislation<sup>81</sup> places extensive obligations on the charity if it is an employer, including:
- (a) responsibility for ensuring, as far as reasonably practicable, the health and safety of both employees of the charity and any individuals who can be affected by the charity's activities;
  - (b) carrying out a sufficient and suitable assessment and review of all work-related risks;
  - (c) putting in place appropriate arrangements for the effective planning, organisation, control, monitoring and review of preventive and protective measures;
  - (d) carrying out audits to ensure that all procedures are adequate;
  - (e) appointing one or more competent persons to implement the necessary measures to ensure compliance; and
  - (f) providing employees with understandable and relevant information about the risks they face along with appropriate training.
- 7.3.4 If the charity has more than five employees it must (and a charity with less than five employees would be recommended to):
- (a) have a written health and safety policy (and this should be separate from the risk policy ([see section 7.2 above](#)) but may be referred to in the risk policy);
  - (b) bring the policy and any changes to the attention of all employees; and
  - (c) record the appropriate arrangements that are in place for the effective planning, organisation, control, monitoring and review of all preventative and protective measures as well as recording the outcomes of any risk assessments carried out.
- 7.3.5 Although residents are not employees, as a matter of good practice residents should be made aware of the charity's health and safety policy and this can be included in the Residents' Handbook ([see section 10.16](#)).
- 7.3.6 The HSE recommends a five-step approach when carrying out a risk assessment:
- (a) identify the hazard(s);
  - (b) decide who could be harmed and how;
  - (c) evaluate the risks and decide on necessary precautions;
  - (d) record the findings of the risk assessment and take the necessary action to remove or reduce the risk; and
  - (e) review the assessment regularly and update as necessary.
- 7.3.7 Some non-exhaustive examples of potential health and safety risks that may be faced by the charity which should be considered are:
- (a) fire;
  - (b) hazardous materials;
  - (c) falls, trips or slips;
  - (d) food hygiene;
  - (e) repairs and maintenance;
  - (f) lifting;
  - (g) lifts and stair lifts;
  - (h) utilities – gas, electricity and water (including risks of Legionella disease);
  - (i) crime and security;
  - (j) traffic; and
  - (k) contractors.



7.3.8 Potential actions that can be taken to limit risk include:

- (a) adequate heating and installing trace heating overrides;
- (b) adequate lighting (often achieved by fitting higher wattage bulbs);
- (c) highlighting steps;
- (d) supplying personal emergency alarm systems;
- (e) avoiding trailing electrical leads, especially in lounge and bedroom areas;
- (f) fixing grab rails by toilets and doorways and fitting banisters on both sides of stairs;
- (g) avoiding rugs or making sure they have non-slip fixtures;
- (h) fixing a letter basket to the front door.

7.3.9 The charity should have a regular programme of inspections, alongside the planned quinquennial inspection ([see section 16.2](#)) which will help to identify and reduce risks. Whoever is retained by the charity to carry out the inspection should be provided with a copy of the health and safety policy, along with all relevant risk assessments, and asked to recommend any changes as part of carrying out their inspection.

**Further resources:**



- The Almshouse Association website: see **Model Health and Safety Policy** in [Model Policies and Templates](#)
- HSE guidance: [The basics for your business](#)
- HSE guidance: [Prepare a health and safety policy](#)
- HSE guidance: [Risk assessment](#)
- HSE guidance: [Provide information and training](#)
- HSE guidance: [Index of Publications](#)
- HSE guidance: [Health and safety in care homes](#)
- HSE guidance: [Health and safety checklist for village and community halls](#) (this contains a useful example checklist that can be adapted for use by an almshouse charity)

## 7.4 Workplaces

7.4.1 Specific regulations provide for places of work to be safe environments<sup>82</sup> and these regulations will apply to any charity that employs staff.

7.4.2 The obligations on the charity include ensuring that:

- (a) all equipment is maintained (including cleaned as appropriate) in an efficient state, in efficient working order and in good repair;
- (b) the workplace is sufficiently ventilated with fresh or purified air;
- (c) the temperature of the workplace is reasonable;
- (d) the workplace has suitable and sufficient lighting;
- (e) the workplace is kept clean;
- (f) any rooms used by staff are of sufficient size (in terms of floor area and height) to allow staff easy access within the workplace and to and from workstations;
- (g) workstations are arranged so as to be suitable for anyone using them;
- (h) floors and surfaces are suitable for the purpose for which they are to be used;
- (i) steps are taken to protect staff from any dangerous substances;
- (j) windows and any transparent or translucence surfaces are appropriately marked if they are not apparent;

- (k) windows and skylights are able to be cleaned safely;
  - (l) individuals and vehicles can circulate the premises in a safe manner;
  - (m) suitable and sufficient sanitary conveniences are provided at accessible places;
  - (n) suitable washing facilities are provided;
  - (o) an adequate supply of wholesome drinking water is provided;
  - (p) arrangements are made for the storage of any clothing required to be worn by staff during working hours; and
  - (q) suitable facilities are provided for rest and to eat meals.
- 7.4.3 Any equipment that is provided for staff to use during their employment must be suitable for the intended use, safe for use and only be used by staff who have received adequate information, instruction and training<sup>83</sup> and have been provided with appropriate protective equipment. This applies to any equipment, so for example would include the provision of a lawn mower or a hedge trimmer for use by the charity's gardener.
- 7.4.4 The charity must protect staff from the health risks work working with display equipment, such as computers, laptops and tablets<sup>84</sup>. If staff are using such equipment for continuous periods of more than an hour at a time, the charity must:
- (a) do a workstation assessment to ensure that suitable seating is provided, that there is no unnecessary glare or reflection and that there is adequate lighting and sufficient space;
  - (b) reduce the associated risks by making sure that staff take regular breaks from such activity;
  - (c) provide an eye test if a member of staff requests it; and
  - (d) provide appropriate training and information to staff.

#### Further resources:



- HSE guidance: [Workplace health, safety and welfare](#)
- HSE guidance: [Provision and Use of Work Equipment Regulations 1998 \(PUWER\)](#).
- HSE guidance: [Personal protective equipment \(PPE\) at work regulations from 6 April 2022](#)
- HSE guidance: [Using work equipment safely](#)
- HSE guidance: [PUWER 1998: Provision and Use of Work Equipment Regulations 1998 – Open Learning Guidance](#).
- HSE guidance: [Working safely with display screen equipment](#).

## 7.5 Housing Health and Safety Rating System

- 7.5.1 The Housing Health and Safety Rating System (“HHSRS”) is a risk-based assessment and evaluation framework, established by legislation<sup>85</sup>, that requires local authorities to identify and protect against potential risks and hazards to the health and safety of any occupants of residential dwellings (whether owned by the local authority or privately owned) that arise from deficiencies in the dwelling. The HHSRS is focussed on health and safety issues and not matters of quality, comfort or convenience.
- 7.5.2 Although HHSRS is a framework for inspection and enforcement by local authorities, trustees should use the framework as a means to self-assess the charity's almshouses to ensure that they are decent homes for residents, and do not pose any health and safety risks. It is recommended that a self-assessment of this nature is carried out annually by the charity. A failure to ensure that the almshouses are decent homes may lead to the charity failing an inspection in the future if a complaint is made by a resident.
- 7.5.3 An inspection by the local authority, to consider HHSRS issues, may be triggered by:
- (a) a routine assessment of properties in a particular area;
  - (b) a request or complaint by a resident to the local authority; or

- (c) a complaint being made by a third-party agency (e.g., social services).
- 7.5.4 The local authority has various powers under the legislation to enter premises. Following an inspection, the local authority inspector will assess what hazards exist using a numerical scoring system and then identify what enforcement action may be taken.
- 7.5.5 HHSRS also covers dwellings that are not occupied.
- 7.5.6 The principle behind HHSRS is that any residential premises, irrespective of who owns or occupies them, should provide a safe and healthy environment for any potential occupier or visitor. The charity is responsible for ensuring that the almshouses are free from any hazards that may cause a health and safety risk to residents including:
- (a) the exterior and structural elements of the almshouse; and
- (b) facilities inside the almshouse such as water, gas and electricity, sanitation and drainage, installations relating to personal hygiene (such as baths and showers), food preparation facilities, ventilation, space and water heating.
- 7.5.7 During any inspection the HHSRS will assess the dwelling against 29 housing hazards, score the hazards based upon the likely harm anticipated from the hazard and determine in relation to any identified hazards whether a potential issue is a:
- (a) Category 1 hazard (i.e., one where the most serious harm outcome is identified) – in which case the relevant local authority must deal with the hazard immediately either by carrying out the necessary work itself, or in some circumstances requiring the charity to carry out the work (for example a gas water heater leaking carbon monoxide that could result in the death of a resident); or
- (b) Category 2 hazard (i.e., one where a less serious harm outcome is identified) – in which case the relevant local authority can require the charity to carry out the work.
- 7.5.8 The potential hazards fall into four groups:
- (a) physiological requirements including hydrothermal conditions and pollutants (non-microbial);
- (b) psychological requirements including space, security, light and noise;
- (c) protection against infection including hygiene, sanitation and water supply; and
- (d) protection against accidents including falls, electric shock, burns and scalds and building related collisions.
- 7.5.9 The position may change in due course under the proposed Social Housing (Regulation) Bill currently before Parliament.
- 7.5.10 The Almshouse Association is also awaiting confirmation from the Welsh Assembly on the current position in Wales.

#### Further resources:



- HHSRS: [Guidance for landlords and property related professionals](#)
- HHSRS: [housing inspections and assessment of hazards](#)
- Government guidance: [A decent home: definition and guidance](#)

## 7.6 Fire Safety

- 7.6.1 The charity has a responsibility under the Regulatory Reform (Fire Safety) Order 2005 (the “**Fire Regulations**”) to ensure that people who come into contact with the charity (including staff) and property are suitably protected against fire and smoke inhalation<sup>86</sup>.
- 7.6.2 The Fire Regulations cover:
- (a) properties used by the charity as offices;



- (b) external areas of properties (e.g., car parks, gardens, paths and landscaped areas);
- (c) communal parts of the charity's premises (including the building's structure and external walls including doors or windows and balconies) and all doors between an almshouse and the common parts of the charity's premises;
- (d) vacant almshouses; but
- (e) do not, on a narrow interpretation of the legislation, cover almshouses that are occupied by residents as their own private dwelling (but the charity should consider the risk to other residents if poor-compartmentalisation could result in fire spreading between almshouses via the communal parts of the charity's premises and the trustees' duty of care towards other residents which may lead to the Fire Regulations being considered to apply to an almshouse).

7.6.3 The charity has a duty under the Fire Regulations to:

- (a) take general fire precautions to ensure that any person who is lawfully on the charity's premises or in the immediate vicinity of the premises who may be at risk from fire on the premises is safe in the event of a fire;
- (b) arrange for a competent person to carry out a risk assessment and keep this under review;
- (c) maintain appropriate records which must be in writing if the charity has more than 5 employees;
- (d) make and give effect to fire safety arrangements;
- (e) provide appropriate equipment for fire-fighting and detection;
- (f) ensure that all premises, equipment, emergency routes and exits are properly maintained and kept in good working order;
- (g) provide information and training to staff;
- (h) provide information to residents about how they may be affected and who is responsible in the event of a fire; and
- (i) consider whether any particular risks are raised by means of any dangerous substances stored on the charity's premises and take appropriate steps to manage such risks.

7.6.4 The charity must ensure that:

- (a) all escape routes are clear, properly marked and as short and direct as possible;
- (b) there are sufficient exits to permit everyone to escape;
- (c) emergency doors open easily and that, where needed, there is appropriate emergency lighting;
- (d) all staff are trained about the escape routes and how to use them, and that they know the agreed safe meeting point;
- (e) all residents understand the procedure to be followed in the event of a fire and this should be included in the Residents' Handbook ([see section 10.16](#));
- (f) it has an appropriate fire detection and warning system in all of the charity's properties which, as a matter of good practice should include the almshouses;
- (g) it has appropriate firefighting equipment and that this is tested and maintained on a regular basis; and
- (h) it carries out fire drills on a regular basis and records the results as part of its overall fire safety and evacuation plan. The Government guidance recommends that drills should be carried out at least once a year. Any fire drill will require careful planning, so as to avoid creating unnecessary panic (especially if residents have limited mobility) and if the charity has adopted a "stay put" policy residents should be informed and the drill should be planned on this basis.

7.6.5 Fire Safety Enforcement Officers from the local Fire and Rescue Service have a right to enter a workplace at a reasonable time, without notice, to carry out a fire safety inspection. In any fire safety inspection, the charity will be expected to be able to produce, as a minimum:





- (a) a copy of the charity's fire risk assessment;
- (b) a plan of the premises;
- (c) a copy of the charity's emergency evacuation plan;
- (d) copies of testing and maintenance certificates and records; and
- (e) details of the staff training plan (if appropriate).

7.6.6 The charity should take professional advice on the appropriate policy for residents in the event of a fire and, in particular, whether to apply a "stay put" policy as opposed to an immediate evacuation policy.

**Personal Emergency Evacuation Plans (PEEPS)-'Fire Safety in Specialised Housing Guidance'**

In sheltered housing schemes, there will be reliance ultimately on rescue by the fire and rescue service in the event that residents cannot escape by themselves. While detailed PEEPs need not be prepared for every resident, information should be collated in respect of any resident with particular cognitive, mobility or other issues affecting their ability to respond to fire alarm signals or attempts to make contact with them by fire-fighters, or to escape.

This information should be made available to the fire and rescue service on arrival at the premises by keeping it in a 'premises information box' (PIB), which can only be unlocked by the fire and rescue service or unlocked remotely by a Telecare ARC (alarm receiving centre), at the main entrance. Details of any residents using oxygen or other medical gases are also usually kept with this information. (It is important that operational fire-fighters are aware of arrangements for provision of information). Consideration can also be given to the provision of a plan adjacent to the fire alarm control panel, showing the locations of residents who would need instruction or assistance to evacuate their own flat (e.g., by means of a red stick-on dot). It is essential that such information is kept up to date to avoid the provision of incorrect information to fire and rescue service crews.

Sometimes more able-bodied neighbours (when present) are often willing to support those in need. If so, they would need to be provided with guidance so they do not endanger themselves.

Relevant information is available in the 'Fire Safety in Specialised Housing' guide which is free to download off the internet:

7.6.7 Smoke, heat and carbon monoxide detectors and alarms

- (a) It is a mandatory requirement under the Fire Regulations for the charity to have smoke and/or heat detectors in all communal areas of the charity's premises.
- (b) In addition, in each almshouse the charity must ensure that<sup>87</sup>:
  - (i) at least one smoke alarm is equipped on each storey of the almshouse where rooms are used as living accommodation;
  - (ii) a carbon monoxide alarm is equipped in any room being used as living accommodation which contains a fixed combustion appliance (excluding gas cookers); and
  - (iii) all smoke alarms and carbon monoxide alarms are repaired or replaced once the charity has been informed, or found out, that they are faulty and the charity should instigate a programme of routine checks.
- (c) The charity should provide residents with information on how to test the smoke alarms and/or carbon monoxide detectors and advise residents on how frequently they should be tested. A risk assessment should be carried out to ensure that all residents are able to carry out tests, and if a resident is not capable arrangements should be made for regular testing to be carried out by staff or a third party. Residents should be advised what to do in the event that smoke alarms appear to be faulty. The charity should also instigate a programme or routine inspections carried out by a competent and able person. If a resident will not allow the charity to access the almshouse to carry out repairs or install the necessary alarm, the charity needs to be able to demonstrate it has taken all reasonable steps to comply with its obligations and may have to consider taking appropriate steps to obtain access. The charity should, however, impress on residents who refuse access that their safety is at risk.



- (d) The charity should test the smoke alarm and/or carbon monoxide detector prior to the commencement of each appointment of a resident and keep a record of the date on which the test was carried out.
- (e) Detectors that are hard-wired into the mains electrical system are preferable to battery operated detectors as they can be linked to an emergency alarm control centre. However, as an interim measure the charity's local fire and safety service will often install battery operated smoke detectors free of charge which they will monitor. Normally the battery will have a 10-year life span and should be replaced after 9½ years.
- (f) All new almshouses that are constructed, or converted from existing buildings, will need to comply with the appropriate building regulations and legislation in relation to fire safety.
- (g) Where fire alarms are installed, consideration should be given to the type of alarm required for the style and kind of building. The position of the fire panel should be in a common area to enable the emergency services to check the zone of the fire. Fire alarm systems, including heat, smoke and carbon monoxide detectors, should be maintained under a contract and linked to a 24-hour monitoring service. This will ensure that the emergency services are alerted in the event of the alarm sounding, which is useful if the charity does not have any resident staff on site.

7.6.8 If the almshouse is provided on a furnished basis, or there is any furniture and furnishings in either communal areas or offices, the charity must ensure that these comply with the Furniture and Furnishings Fire Safety Regulations 1988 (as amended). In addition, residents should be advised that all furniture and furnishings they bring into the almshouse should comply with these regulations, so as to reduce the risk of fire in the almshouse.

#### Further resources:



- The Almshouse Association website: see **Fire Safety Audit Check List** in [Model Policies and Templates](#)
- Government guidance: [Fire safety law and guidance documents for business](#)
- Government guidance: [fire safety risk assessment: 5-step checklist](#)
- Government guidance: [Regulatory Reform \(Fire Safety\) Order 2005: enforcement](#)
- Government guidance: [Fire safety risk assessment: means of escape for disabled people](#)
- Government guidance: [Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022: guidance for landlords and tenants](#)
- Government guidance: [Fire safety information](#)
- [Fire safety of furniture and furnishings in the home: a guide to the UK regulations](#)
- National Fire Chiefs Council (NFCC) guidance booklet: [Specialised Housing Guidance](#)
- NFCC web guidance: [Specialised Housing Guidance](#)
- HSE guidance: [Fire Safety](#)

## 7.7 Slips, trips and falls (including winter gritting and snow clearing)

- 7.7.1 The charity should consider the potential risk of slips, trips and falls. In particular, the charity should focus on the potential risk to staff<sup>88</sup> in the workplace (see section 7.3) as well as the potential risks to residents and their visitors<sup>89</sup>.
- 7.7.2 In most cases risks can be significantly reduced by good initial design, appropriate lighting, a high standard of maintenance, regular risks assessments and a thorough quinquennial inspection.
- 7.7.3 When refurbishing dwellings, non-slip surfaces should be provided in kitchens, bathrooms and other non-carpeted areas. Flooring should be non-slip and non-reflective and should not include small flecks – which can be mistaken for loose items and may encourage elderly people to bend to pick them up.
- 7.7.4 Consideration should be given to the design and maintenance of paths. Non-slip surfaces should be laid wherever possible. The edges of steps should be painted in contrasting colour to help users to distinguish the hazard. All steps and pathways should be well illuminated. Regular maintenance avoids the build-up of moss and leaves.
- 7.7.5 Procedures should be in place for clearing snow and ice from paths. The following actions are recommended:

- (a) the charity should inform staff and residents, in advance of bad weather, which routes or paths will be gritted or cleared of snow and advise them to use these routes or paths;
- (b) where possible restrict access to routes that have not been cleared of snow by use of a barrier;
- (c) do not take steps to clear snow from outside of the boundary of the charity's property, unless a risk assessment has been carried out which concludes such action is appropriate;
- (d) erect warning signs at the entrance to all routes, in particular those that have not been cleared, and remove them after the event;
- (e) keep a written record of all routes which were cleared of snow or gritted, including the date and time when such action was carried out. It will be necessary in most cases for the action to be repeated on a regular basis;
- (f) ensure that an appropriate risk assessment has been carried out before any activity is undertaken and that those involved in carrying out the task have been properly trained and equipped;
- (g) arrange for suitable doormats to be available at entrances to buildings; and

7.7.6 record any accidents ([see section 7.18](#)).

#### Further resources:



- HSE guidance: [Slips and Trips – hazard spotting checklist](#)
- HSE guidance: [Slips and Trips – Frequently asked questions](#)

## 7.8 Lifting, Manual Handling and Lifting equipment

7.8.1 The charity should, as far as possible, take steps to avoid staff from having to carry out any manual handling operations at work which might put them at risk of injury<sup>90</sup>. Such operations may include any of the following:

- (a) twisting the trunk;
- (b) stooping or reaching upwards;
- (c) excessive lifting or lowering distances;
- (d) excessive carrying distances;
- (e) excessive pulling or pushing of a load;
- (f) frequent or prolonged physical effort;
- (g) insufficient rest or recovery periods;
- (h) rate of work imposed by a process;
- (i) handling whilst seated; or
- (j) team handling.

7.8.2 If it is not possible to avoid such operations, then the trustees must carry out a risk assessment and ensure that appropriate steps are taken to reduce the risk of injury as identified by the risk assessment. The issues that need to be considered by the trustees when carrying out the risk assessment are set out in Schedule 1 to The Manual Handling Operations Regulations 1992.

7.8.3 Following the preparation of the risk assessment, the charity should prepare a manual handling policy which deals with the circumstances in which staff may need to handle residents in the event of a resident having a fall and, in those cases, what the staff are expected to do. In the absence of specialised lifting equipment (which the almshouse is unlikely to have in place), it would be recommended that staff are advised never to directly lift or attempt to lift a resident and the staff should be told how to obtain appropriate help which is likely to be a case of calling an ambulance.



- 7.8.4 If the charity provides its own lifting equipment (either for people or other types of loads, which may include lifts and stair lifts) then<sup>91</sup>:
- (a) staff need to be properly trained in how to use the equipment and the use of the equipment needs to be properly supervised;
  - (b) the equipment must be fit for purpose, appropriate for the relevant task and have suitable markings to confirm the purposes for which it can be used; and
  - (c) the equipment needs to be inspected and examined on a regular basis and appropriate records kept of all examinations<sup>92</sup>.

**Further resources:**



- [Schedule 1 to The Manual Handling Operations Regulations 1992](#)
- HSE guidance: [Manual handling at work a brief guide](#)
- HSE guidance: [Manual handling assessment charts \(the MAC tool\)](#)
- HSE guidance: [Lifting Operations and Lifting Equipment Regulations 1998](#)

## **7.9 Utilities**

- 7.9.1 It is a legal requirement that all gas and electrical installations owned by the charity should be serviced on a regular basis.

### **Gas**

- (a) The charity has a legal duty to ensure that all gas appliances, fittings, installation pipework and any flue provided by the charity are installed and/or maintained in a safe condition, so as to prevent the risk of injury to anyone occupying the charity's premises (including staff) and/or any almshouse<sup>93</sup>.
- (b) The charity does not have any duties in relation to any gas appliances that are owned by a resident, and any flues or chimneys which are only connected to an appliance owned by a resident.
- (c) The charity must check the appliances and flues for safety not less than every 12 months and must keep a record of the safety check for a period of 2 years from the date of the check.
- (d) The check should be carried out by a suitably qualified engineer.
- (e) The charity should not assume that an annual service inspection will be sufficient to comply with the safety check requirements under the legislation and the charity should always confirm with the engineer that the check will be sufficient to meet the charity's obligations under the legislation.
- (f) The check includes any appliances or flues serving the almshouse, even if located outside of the almshouse (for example a communal central heating boiler).
- (g) A copy of the annual safety check must be given by the charity to the resident within 28 days of the date of the check and when any new resident moves into an almshouse they must be given a copy of the last check that was carried out<sup>94</sup>.
- (h) The charity must ensure that there are no gas appliances in rooms used as sleeping accommodation that fail to comply with the legislation<sup>95</sup>, unless the room in question has been used as sleeping accommodation since prior to 1988.
- (i) If there are no gas appliances in the almshouse, but there are gas fittings or flues that serve the almshouse, the charity must still provide the resident with a copy of the gas safety check carried out on the almshouse.



- (j) The obligations under the legislation also include ensuring the safety of some portable or mobile appliances including in particular liquid petroleum gas cabinet heaters. If the charity provides such heaters, they must be checked as set out above. If such appliances are not provided by the charity, the charity should consider whether the use of such appliances by residents is permitted. Given the associated risks, it is recommended that the charity does not allow residents to use liquid petroleum gas cabinet heaters and that this is made clear in the Residents' Handbook ([see section 10.16](#)).
- (k) The duty on the charity to comply with the legislation cannot be delegated to residents and/or staff and/or a managing agent. Trustees retain the overall responsibility for compliance with the legislation and if a third party is carrying out this activity on their behalf (e.g., a managing agent) this must be documented carefully and the trustees must ensure that the third party is carrying out the necessary activity on their behalf.

#### 7.9.3 Electricity

- (a) The charity, as an employer, has a duty to make sure that all electrical installations and portable equipment or appliances used by staff are suitable for the use being made of them, are safe and properly maintained in an appropriate condition<sup>96</sup>. The charity should therefore ensure that portable appliance testing is carried out on all electrical appliances belonging to the charity on a regular basis.
- (b) The charity has a legal duty to ensure that all fixed electrical parts, such as the wiring, plug sockets, light fittings and fuse box<sup>97</sup> (i.e., electrical installations) comply with the prescribed electrical safety standards<sup>98</sup>.
- (c) The charity must ensure that all electrical installations in the almshouses are inspected and tested at regular intervals every 5 years or sooner (i.e., if a previous test stipulated a shorter period) by a qualified person.
  - (i) A copy of the test must be given to the resident within 28 days of it being carried out.
  - (ii) A copy of the test must be retained and handed to the person doing the next inspection.
  - (iii) A copy of the test must be given to any new resident before they move into the almshouse.
  - (iv) The charity should also check whether the test states that any follow up work is required and, if so, carry out such work.
- (d) The charity's obligations do not apply to electrical appliances that are not fixed (e.g., cookers, fridges, televisions etc.) but it is recommended (under Government guidance) that the charity carries out portable appliance testing on any electrical appliance that it provides to residents, and that the resident is provided with a copy of any inspection. In addition, as a matter of good practice, the charity should consider carrying out portable appliance testing on all of the residents' personal electrical equipment and the cost of this would be a legitimate expense for the charity to bear.
- (e) If the charity is unable to obtain access to the almshouse to carry out the necessary inspection (and/or any follow up remedial work) the charity will not be in breach of its duties if it can show that it took all reasonable steps to comply with its' duties and may have to consider taking appropriate action to obtain access.

#### 7.9.4 Water

- (a) The charity has a legal duty to assess and control the risk of exposure by staff, residents and the public to<sup>99</sup>:
  - (i) water at high temperatures; and
  - (ii) legionella bacteria.
- (b) The charity must arrange for a competent person who has been properly trained to carry out an assessment to identify and evaluate the potential sources of risk and appropriate steps to

be taken to either eradicate the risk or, if that is not reasonably practicable, to control the risk of exposure.

- (c) In relation to the risk of scalding from hot water, the charity should where possible ensure that temperature mixing valves (TMV 3s) are installed, so that the hot water is prevented from exceeding a temperature of 43°C.
- (d) Legionella is bacteria that is common in man-made hot and cold-water systems which may cause Legionnaires' disease, a potentially fatal form of pneumonia. In order to ensure that the almshouse and any other communal water sources (for example public or staff toilets, sprinkler systems etc.) are free of legionella, the charity should consider:
  - (i) flushing out any water system prior to a new resident occupying an almshouse;
  - (ii) taking steps to avoid debris getting into the water system (e.g., ensuring that cold water tanks have tight fitting lids);
  - (iii) setting appropriate control parameters (e.g., to ensure that the temperature of water in a hot water cylinder exceeds 60°C and that the temperature of water in the cold-water tanks is maintained below 20°C);
  - (iv) making sure that any redundant water pipework is removed;
  - (v) advising residents of the need to regularly clean showerheads;
  - (vi) advising residents not to alter the temperature of the hot water cylinder;
  - (vii) ensuring that the water is not allowed to stagnate in water systems in unoccupied almshouses (and implement an appropriate flushing regime); and
  - (viii) potentially consider carrying out appropriate testing.
- (e) The charity should ensure that it keeps appropriate records of all risk assessments carried out, and that the assessment is reviewed on a periodic basis.
- (f) In relation to water systems used by employees, the charity must comply with the HSE Approved Code of Practice in relation to Legionnaires' disease.

#### Further resources:



- Gas Safe Register: [Landlord Gas Responsibilities](#)
- HSE Guidance: [Gas safety-landlords and letting agents](#)
- Government guidance: [Electrical safety standards in the private rented sector: guidance for landlords, tenants and local authorities](#)
- Electrical Safety First: [PAT Testing Explained](#)
- HSE Approved Code of Practice: [Legionnaires' disease](#)
- HSE guidance: [Legionella and landlords' responsibilities](#)

## 7.10 Control of Substances Hazardous to Health Regulations 2002

- 7.10.1 The charity has a duty to control exposure by staff, residents and the public to hazardous substances that may cause ill health<sup>100</sup>.
- 7.10.2 The charity will need to carry out a risk assessment to identify what hazards may exist, who is placed at risk, and how to monitor and control the exposure.
- 7.10.3 The legislation covers proprietary cleaning materials and any item that bears a distinctive yellow hazard symbol. When purchasing hazardous items, it is important the charity obtains and retains the relevant Hazard Data Sheet from the supplier, so that an appropriate risk assessment can be made. All staff should have access to the assessment and data sheets.

- 7.10.4 Whilst the potential use of hazardous substances within a charity is likely to be low, particular attention should be paid to:
- (a) cleaning materials; and
  - (b) gardening / maintenance materials (e.g., weed killer, poison etc.).
- 7.10.5 The charity should ensure that:
- (a) all hazardous substances in use in the charity are identified;
  - (b) they are safely stored and that access is controlled;
  - (c) staff have training in their use and are provided with appropriate protective clothing and/or equipment; and
  - (d) staff are aware what to do in the event of fire or contamination.

#### Further resources:



- [COSHH hazard symbols](#)
- HSE guidance: [COSHH Essentials](#)

## 7.11 Asbestos

- 7.11.1 The charity has a legal duty to protect employees from the risks related to exposure to asbestos<sup>101</sup> that may exist in any non-domestic premises owned by the charity. In addition, the charity has a legal duty to protect other people, not employed by the charity, who may be affected by work done on asbestos (e.g., residents, members of the public, volunteers etc.) in such areas. There is no definition in the legislation of “non-domestic premises”, but the HSE takes a broad approach and the charity is advised to comply with the legislation in respect of all common parts of the charity’s premises which may be used for access, circulation and storage (for example communal entrances and rooms, staircases, control rooms, gardens, storerooms, etc.). Furthermore, given the potential risk to residents, the charity should also consider taking appropriate steps to ascertain whether any asbestos exists in the almshouses and take appropriate steps to deal with it.
- 7.11.2 It is illegal to use asbestos in the construction or refurbishment of any premises, but the charity should identify whether or not there is any asbestos present on the charity’s premises. If the premises were built or refurbished before 2000 it should be assumed that asbestos will be present unless proved to the contrary by a survey. Historically asbestos has been used for (amongst other things):
- (a) fire protection in ceiling voids and ducts;
  - (b) thermal insulation of pipes and boilers;
  - (c) wall partitions, ceiling and wall panels;
  - (d) roofing and wall cladding, gutters, rainwater pipes, water tanks;
  - (e) decorative plasters, paints; and
  - (f) roofing felt, floor and ceiling tiles.
- 7.11.3 The legal duty requires the charity to manage the risk from asbestos by:
- (a) finding out if asbestos is present on the premises and its condition – this can be done by appointing a suitably trained person to conduct a survey;
  - (b) keeping an up-to-date record of the asbestos and its condition – this can be done by keeping a photographic record, but care must be taken not to disturb the asbestos when preparing the record;
  - (c) assessing the risk posed by the asbestos;
  - (d) preparing, implementing and monitoring a plan setting out how the risk will be managed;



- (e) periodically reviewing the plan; and
  - (f) having appropriate systems so that anyone coming to work on the premises (e.g., employees, and also external third-party contractors) can be provided with the appropriate information to avoid them disturbing the asbestos during the work. This may include putting in place appropriate warning labels on the asbestos.
- 7.11.4 The HSE Guidance provides a detailed checklist on the steps the charity should take in relation to asbestos management.
- 7.11.5 If the charity finds asbestos on the premises, it should employ a licensed contractor to take appropriate steps to remove or seal the asbestos and this work should not be undertaken by the charity itself.

**Further resources:**

- HSE guidance: [Managing and working with Asbestos](#)

**7.12 Food Safety**

- 7.12.1 It is a requirement that any organisation which provides food or drink directly to the public, with a certain degree of continuity and organisation, must be registered with the relevant local authority<sup>102</sup>. It does not matter whether the food is provided for free or without the intention of making a profit. Whether a charity needs to be registered will depend upon the nature, size and regularity of the charity's activities in relation to the provision of food and drink.
- 7.12.2 If the charity only supplies food or drink on an occasional and small-scale basis then it is unlikely to need to register. Guidance from the Food Standards Agency<sup>103</sup> makes it clear that provision of food on at least one occasion a month would be considered sufficient continuity of provision, and it would then be necessary to consider the degree of organisation relating to the food provision. If, for example, the food provision was merely pre-packaged biscuits for a meeting, that would not be considered to require a sufficient degree of organisation to require the charity to be registered.
- 7.12.3 If the charity is in doubt as to whether or not it should be registered it should liaise with its local authority.
- 7.12.4 Even if the charity is not required to register, the charity has a duty to ensure that any food or drink provided by the charity is safe and wholesome<sup>104</sup>, that staff and volunteers have been properly trained in the handling of food and that all legislation relating to food safety and hygiene has been followed<sup>105</sup>.
- 7.12.5 The charity must ensure that anyone handling food is:
- (a) supervised and trained in food hygiene; and
  - (b) provided with and uses appropriate protective or area-specific clothing and equipment.
- 7.12.6 The charity will also need to ensure compliance with the legislation in relation to:
- (a) the personal hygiene of people handling food;
  - (b) sanitary provision and washbasins;
  - (c) clean work areas and equipment;
  - (d) suitable premises and storage facilities; and
  - (e) disposal of food waste.
- 7.12.7 The charity should ensure that it follows the main principles of food hygiene which cover:
- (a) cleaning;
  - (b) chilling;
  - (c) cooking; and
  - (d) avoiding cross-contamination.

- 7.12.8 If the charity provides any food that is prepacked for direct sale on the charity's premises it must comply with the legislation on allergen information<sup>106</sup>. If the charity is not required to be registered as a food business, this information does not need to be provided, but it is recommended that the charity provides as much information as possible about allergens that may be present in any food or drink provided by the charity.
- 7.12.9 If catering is a regular activity carried out by the charity, then all staff who are involved should attend appropriate training and attend a basic food hygiene certificate course.

#### Further resources:



- Food Standards Agency guidance: [Guidance on the application of EU food hygiene law to community and charity food provision.](#)
- Food Standards Agency guidance: [Providing food at community and charity events](#)

### 7.13 Pest Control

- 7.13.1 The charity has a legal requirement to ensure that its premises are safe<sup>107</sup> and without risks to health, that it does not provide any food that is unfit or contaminated<sup>108</sup> and to notify the local authority if it has any infestation of rodents<sup>109</sup>.
- 7.13.2 The charity should therefore ensure that it takes steps to control pests such as rats, mice and cockroaches by:
- keeping the premises in a good state of repair and in a clean and tidy condition;
  - eliminating gaps and holes in the building, especially around doors and windows, around electrical conduits and around pipework;
  - ensuring that drains above and below ground are kept in good repair;
  - keeping the perimeter of the charity's premises free from vegetation and the build-up of any rubbish; and
  - arranging for a reputable pest controller to visit periodically to undertake surveys, monitoring and provide treatment as required.

### 7.14 Traffic

- 7.14.1 The charity has duties to consider the use of traffic on site, both in relation to ensuring that employees are safe, but also to ensure that members of the public (including residents) are safe.
- 7.14.2 Appropriate access should be available to all almshouses for emergency vehicles. If this is not possible, the charity should consider what alternative arrangements can be made in the event of an emergency.
- 7.14.3 If residents are provided with parking spaces on the charity's premises, the charity needs to consider the appropriate routes for access to and from the parking. In particular, if there are narrow access roads, blind corners and limited turning space the charity should consider how the associated risks can be mitigated.
- 7.14.4 Where possible the charity should:
- ensure that pedestrian access is segregated from vehicle traffic (e.g., by ensuring footpaths have a raised curb);
  - have clear signs to direct visitors and residents to and from car parks, as well as being clear about the pedestrian access;
  - use clear safety markings using generally well-understood signage with common symbols;
  - consider traffic-calming measures; and



- (e) consider the needs of elderly and/or disabled residents in terms of access.

**Further resources:**



- HSE guidance: [a guide to workplace transport safety](#)

## 7.15 Mobility Scooters

- 7.15.1 The usage of mobility scooters is not regulated by legislation, but the legislation relating to health and safety and fire safety does apply. There are many reports of fires related to mobility scooters, including attempted arson incidents.
- 7.15.2 Where consistent with the resident living independently ([see section 10.11](#)), the charity should support the use by residents of mobility scooters, provided that this can be balanced alongside the health and safety of all residents, staff and members of the public.
- 7.15.3 Mobility scooters fall into three categories:
- Class 1 – manually operated wheelchairs;
  - Class 2 – power wheelchairs and mobility scooters meant for indoor use or pedestrian routes;
  - Class 3 – power vehicles and mobility scooters designed for use on roads and highways.
- 7.15.4 If residents are permitted to use class 2 or class 3 mobility scooters in their almshouse or stored communally in the charity's premises, then the charity needs to consider the potential fire risks. The charity needs to carry out a thorough risk assessment, including considering:
- the potential risk of arson;
  - whether the storage area is constructed so as to reduce fire spread (it is recommended that all storage should be at least 6m away from other buildings);
  - the potential impact on any external escape routes;
  - the electrical installations;
  - location, access and egress;
  - maintenance; and
  - monitoring.
- 7.15.5 If charging facilities are provided for residents, then these need to be sufficient for the relevant purpose and subject to appropriate portable-appliance-testing.
- 7.15.6 A refusal to allow a resident to have a mobility scooter may be considered controversial and it is therefore sensible for the charity's policy on such scooters to be dealt with up front in the Residents' Handbook ([see section 10.16](#)) and for there to be a clear policy.
- 7.15.7 The charity has a duty<sup>110</sup> to ensure that all common parts of the charity's premises used as emergency routes and exits in the event of a fire are clear, and this requires the charity to ensure that corridors and other exits are not blocked by the storage of mobility scooters.
- 7.15.8 If the charity permits residents to store mobility scooters on the premises (either communally or within an almshouse) the charity should check to ensure that its insurance provides appropriate cover.

**Further resources:**



- The Almshouse Association website: see **Model Mobility Scooter Policy** in [Model Policies and Templates](#)
- National Fire Chiefs Council guidance: [Mobility Scooter Guidance for Residential Buildings](#)

## 7.16 Contractors

- 7.16.1 If the charity employs contractors (for example for maintenance, cleaning, gardening, servicing equipment, repairs and building work) both the charity and the contractor have duties under the health and safety legislation<sup>111</sup>. The duty is to take the right precautions to reduce the risk of workplace dangers to employees and the public.
- 7.16.2 The charity should:
- (a) identify what work the contractor is being instructed to do;
  - (b) select a suitable contractor and check that the contractor is able to do the job safely and without risk (i.e., do they have the right combination of skills, experience and knowledge) as well as having up-to-date insurance;
  - (c) work with the contractor to identify the risks associated with the work and put in place appropriate safety precautions;
  - (d) co-operate and co-ordinate with the contractor so that the work is carried out safely;
  - (e) ensure that staff know how to raise any concerns about the contractor or the work being done; and
  - (f) manage and supervise the work being carried out by the contractor – in particular the charity should consider the impact on residents and ensure that works are carried out in a way that does not impact unduly on the residents.
- 7.16.3 If the charity is going to carry out any type of construction work<sup>112</sup> (which may include construction, refurbishment, repair, redecoration, renovations and alterations etc.) then the charity must comply with further regulations<sup>113</sup>. Under the regulations the charity must:
- (a) appoint the right people and if more than one contractor is involved, must appoint (in writing) a principal designed and a principal contractor;
  - (b) ensure that there are proper arrangements in place for managing and organising the project;
  - (c) allow enough time for the project to be properly planned and implemented;
  - (d) provide the contractor with all appropriate information about the work to be carried out and any potential hazards (for example buried services, or asbestos etc.);
  - (e) communicate fully with the designer and building contractor;
  - (f) ensure that there are appropriate welfare facilities on site for the workforce;
  - (g) ensure a construction phase plan is in place;
  - (h) maintain a health and safety file relating to the project;
  - (i) take steps to protect the public and employees; and
  - (j) ensure that the appropriate notifications (if required) have been made to HSE.

### Further resources:



- HSE guidance: [Contractors](#)
- HSE guidance: [Need building work done? A short guide for clients on Construction \(Design and Management\) Regulations 2015.](#)
- HSE Guidance: [Using contractors-A brief guide](#)

## 7.17 First Aid and Accidents

7.17.1 The charity is required, as an employer, to:

- (a) carry out an assessment of likely first aid needs (which will include considering whether there is a need for an individual member of staff to have had first-aid training);
- (b) provide adequate and appropriate equipment, facilities and personnel to ensure that employees receive immediate attention if they are injured or taken ill at work<sup>114</sup>. As a minimum this will involve:
  - (i) providing a suitably stocked first-aid kit;
  - (ii) appointing a member of staff to take charge of first-aid arrangements (which may involve asking them to undertake first aid training); and
  - (iii) providing employees with information about the arrangements in place.

7.17.2 Whilst the regulations do not apply to making provision for members of the public and/or residents, it would be appropriate for the charity to have considered the potential first-aid needs of the members of the public visiting the charity and the residents in order to make appropriate provision for their needs.

### Further resources:



- HSE guidance: [The Health and Safety \(First-Aid\) Regulations 1981. Guidance on Regulation.](#)
- HSE guidance: [First aid at work – your questions answered](#)

## 7.18 Reporting accidents and incidents at work

7.18.1 The charity is required<sup>115</sup> to report and keep records in relation to:

- (a) any work-related accidents which cause death;
- (b) any work-related accidents which cause certain serious injuries;
- (c) any occurrences of certain occupational diseases which are likely to have been caused or made worse by the employee's work; and/or
- (d) any incidents that may have the potential to cause harm (i.e., near misses). These are detailed in the legislation and cover for example failures of plant and equipment or collapse of lifting equipment<sup>116</sup>.

7.18.2 The obligation to report arises under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 and is often referred to as "RIDDOR".

7.18.3 Not all accidents need to be reported under RIDDOR, only those which are work-related and result in an injury of the type which is classed as reportable (see HSE Guidance: Types of reportable incidents).

- (a) All deaths of staff and/or members of the public (including residents) need to be reported if they arise from a work-related incident or as a result of exposure to a biological agent.
- (b) In the case of other injuries, if these are to a non-staff member (e.g., a resident) then they should only be reported if they are work-related and involve the individual being taken to hospital.
- (c) A report must be made to the relevant authority as quickly as possible, and then followed up with a full report within 10 working days of the incident<sup>117</sup>.

- (d) A full record of the incident must be kept including the prescribed details set out in the legislation, and it must be kept for 3 years from the date on which it was made<sup>118</sup>.
- 7.18.4 If an employee is off work due to a work-related injury caused by an accident, then:
- (a) if the period off work is over 3 days, but not more than 7 days, the accident must be recorded in the charity's accident book but does not need to be reported under RIDDOR;
  - (b) if the period off work is over 7 days (not including the day of the accident) the accident must be reported under RIDDOR within 15 days of the accident and recorded in the accident book.
- 7.18.5 In addition, the charity has an obligation to:
- (a) investigate the circumstances of any accident that occurs in the workplace; and
  - (b) if the charity has 10 or more employees to keep an accident book in an approved form (which can be maintained in electronic form) which must be maintained for at least three years from the date of the last entry<sup>119</sup>.
- 7.18.6 It is important to record details of all accidents occurring in the workplace irrespective of how small and insignificant they may appear. Potential accidents should also be recorded. It is appropriate for the trustees to review the accident book on a regular basis as part of reviewing and considering the charity's overall approach to risk management. In particular, if the accident book reveals particular trends or issues the trustees should identify how to reduce the risk of such issues occurring.
- 7.18.7 It is important to keep the contents of the accident book confidential so as to comply with the charity's obligations in relation to data protection (see section 15).

#### Further resources:



- HSE guidance: [Reporting accidents and incidents at work](#)
- HSE guidance: [Types of reportable incidents](#)
- HSE guidance: [How to make a RIDDOR report](#)

## 7.19 Serious Incident Reporting

- 7.19.1 If a serious incident occurs within the charity, the charity must make a prompt, full and frank disclosure to the Charity Commission. The trustees can delegate the responsibility to report to employees, but the trustees retain responsibility for reporting.
- 7.19.2 A serious incident is one which, in the context of the charity, is significant and results in or risks:
- (a) harm to the charity's beneficiaries, staff, volunteers or those who engage in the charity's activities;
  - (b) loss of the charity's money or assets;
  - (c) damage to the charity's property; or
  - (d) harm to the charity's work or reputation.
- 7.19.3 The Charity Commission expects incidents to be reported so that the Commission can be satisfied that the trustees are dealing with the incident responsibly and that steps have been taken to limit the impact of the incident. The Commission will only take further action, following a report, if they feel that the incident has not been dealt with properly or in accordance with the trustees' duties.
- 7.19.4 Any report should be submitted as soon as possible and, if appropriate, the charity can provide updated information as and when the situation develops.
- 7.19.5 If the incident involves a crime, then the Charity Commission would expect a report to be made unless the impact on the charity is considered very minor.



- 7.19.6 If the charity has made a report to any other regulator, then a serious incident report should also be made to the Charity Commission.
- 7.19.7 In the event of any incident the charity should:
- (a) take appropriate action to minimise any further harm, loss or damage;
  - (b) report it to the Charity Commission as a serious incident;
  - (c) report it to the police or any other relevant agency;
  - (d) plan communications for staff, volunteers, residents and the public; and
  - (e) carry out a proper review to ensure whether steps can be taken to prevent further repeats of the same incident.

**Further resources:**



- Charity Commission guidance: [How to report a serious incident in your charity](#)
  - Charity Commission guidance: [Examples table: deciding what to report](#)
  - Charity Commission [online form](#) to report a serious incident on behalf of the trustee body
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## CHECKLIST – RISK MANAGEMENT

- ☒ Does the charity have a risk management policy?
- ☒ Is the risk management policy reviewed at each trustees' meeting?
- ☒ Is the charity required to prepare a Trustees' Annual Report and, if so, does the charity have a risk management statement in the Trustees' Annual Report?

### Health & Safety

- ☒ Does the charity have a health and safety policy and, if the charity has more than 5 employees, is this written down?
- ☒ Does the charity carry out regular inspections to identify health and safety risks?
- ☒ Does the charity's workplace comply with the Workplace (Health, Safety and Welfare) Regulations 1992?
- ☒ Have all staff been asked to carry out a workstation assessment?

### Housing Health and Safety Rating System

- ☒ Has the charity carried out a self-assessment against the HHSRS framework?

### Fire Safety

- ☒ Is the charity clear as to which areas are covered by the Fire Regulations?
- ☒ Has the charity carried out a fire risk assessment?
- ☒ Are all premises, equipment, emergency routes and exits properly maintained and in good working order?
- ☒ Are any dangerous substances stored on the charity's premises?
- ☒ Do all residents understand what to do in the event of a fire?
- ☒ Are there smoke alarms in all the communal areas?
- ☒ Have smoke alarms and carbon monoxide alarms been fitted in the almshouses?
- ☒ Is there a regular, and documented, process of testing alarms?
- ☒ Does any furniture provided by the charity comply with the regulations?

### Slips, trips and falls

- ☒ Are all surfaces in the almshouses covered with suitable coverings to minimise the risk of slips, trips and falls?
- ☒ Have residents and staff been advised of the procedures that will apply in the event of snow and ice?

### Lifting, Manual Handling and Lifting Equipment

- ☒ Has the charity carried out a risk assessment of any manual handling carried out by staff?
- ☒ Does the charity have a clear policy that applies in relation to any residents that may have suffered from a fall?
- ☒ Is all lifting equipment properly maintained?
- ☒ Have staff been properly trained to use any lifting equipment?

### Gas

- ☒ Have all gas appliances and flues been checked in the last 12 months by a suitably qualified engineer?



- ☒ Have all residents been given a copy of the safety checks?
- ☒ Does the Residents' Handbook address whether or not residents can use portable / mobile gas appliances?

#### Electricity

- ☒ Have all fixed electrical installations been checked in the last 5 years (or any shorter period as required by any previous test certificate)?
- ☒ Have all residents been given a copy of the safety checks?
- ☒ Does the charity routinely carry out electrical testing on the residents' personal appliances?

#### Water

- ☒ Has the charity carried out regular tests for Legionella?
- ☒ Has the charity installed appropriate safeguards to manage the temperature of hot water?

#### Asbestos

- ☒ Does the charity have a record of all asbestos in the charity's almshouses?
- ☒ Does the charity carry out periodic reviews on the asbestos and update the charity's policy?

#### Mobility Scooters

- ☒ Does the charity have a clear policy on the use of mobility scooters by residents?
- ☒ Has the charity confirmed that its insurance covers the storage of mobility scooters on site?

#### Contractors

- ☒ Does the charity have a list of approved contractors for maintenance or refurbishment work?

#### First Aid

- ☒ Has the charity carried out an assessment of likely first aid needs?
- ☒ Does the charity have appropriate first aid resources?
- ☒ Has the charity appointed appropriate first aid personnel?

#### RIDDOR

- ☒ Has the charity properly reported all work-place accidents?
- ☒ Has the charity maintained an accident book?

#### Serious Incident Reporting

- ☒ Has the charity reported all serious incidents to the Charity Commission?

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#### References:

- <sup>80</sup> Regulation 40(2)(b)(ii)(ee) of The Charities (Accounts and Reports) Regulations 2008.
- <sup>81</sup> Health and Safety at Work etc. Act 1974 and associated regulations including the Management of Health and Safety at Work Regulations 1999.
- <sup>82</sup> Workplace (Health, Safety and Welfare) Regulations 1992.
- <sup>83</sup> Provision and Use of Work Equipment Regulations 1998.
- <sup>84</sup> The Health and Safety (Display Screen Equipment) Regulations 1992.
- <sup>85</sup> Housing Act 2004.
- <sup>86</sup> Regulatory Reform (Fire Safety) Order 2005.



- 87 *Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022. Note that the regulations are made under the provisions of the Energy Act 2013 which provides in section 150(10) that “tenancy” in this context includes “any lease, licence, sub-lease or sub-tenancy (and “landlord” is to be read accordingly)”.*
- 88 *Regulation 12 of The Workplace (Health, Safety and Welfare) Regulations 1992.*
- 89 *Occupiers’ Liability Act 1984.*
- 90 *The Manual Handling Operations Regulations 1992.*
- 91 *Lifting Operations and Lifting Equipment Regulations 1998 and the Provision and Use of Work Equipment Regulations 1998.*
- 92 *Regulation 11 of the Lifting Operations and Lifting Equipment Regulations 1998.*
- 93 *Regulation 36 of The Gas Safety (Installation and Use) Regulations 1988.*
- 94 *Regulation 36(6) of The Gas Safety (Installation and Use) Regulations 1988.*
- 95 *Regulations 30(2) and (3) and Regulations 36(11) and (12) of The Gas Safety (Installation and Use) Regulations 1988.*
- 96 *The Electricity at Work Regulations 1989.*
- 97 *The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. Note that the regulations are made under the provisions of the Housing and Planning Act 2016 which provides in section 122(6) that “tenancy” in this context includes “a licence to occupy (and “landlord” is to be read accordingly)”.*
- 98 *The standards for electrical installations in the eighteenth edition of the Wiring Regulations published by the Institution of Engineering and Technology and the British Standards Institution as BS 7671: 2018.*
- 99 *Sections 2 and 3(2) of the Health and Safety at Work etc. Act 1974.*
- 100 *The Control of Substances Hazardous to Health Regulations 2002.*
- 101 *The Control of Asbestos Regulations 2012.*
- 102 *Article (6) of EC Regulation 825/2004.*
- 103 *Food Standards Agency: Guidance on the application of EU food hygiene law to community and charity food provision.*
- 104 *Food Safety Act 1990.*
- 105 *Food Safety and Hygiene (England) Regulations 2013.*
- 106 *Food Information (Amendment) (England) Regulations 2019.*
- 107 *The Health & Safety at Work etc. Act 1974.*
- 108 *Food Safety Act 1990.*
- 109 *Prevention of Damage by Pests Act 1949.*
- 110 *The Regulatory Reform Order (Fire) 2005.*
- 111 *The Health & Safety at Work etc. Act 1974 and the Management of Health and Safety at Work Regulations 1992.*
- 112 *As defined in regulation 2(1) of The Construction (Design and Management) Regulations 2015.*
- 113 *The Construction (Design and Management) Regulations 2015.*
- 114 *The Health and Safety (First-Aid) Regulations 1981.*
- 115 *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.*
- 116 *Schedule 2 of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.*
- 117 *Regulation 1 of Schedule 1 of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.*
- 118 *Regulation 12 of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.*
- 119 *The Social Security (Claims and Payments) Regulations 1979.*





## 8 FINANCIAL MANAGEMENT

### 8.1 Trustee Duties

- 8.1.1 Trustees have a duty to manage the resources of the charity responsibly, which is sometimes referred to as the duty of prudence. (See [section 4.6](#) for more detail about trustees' duties.)
- 8.1.2 In particular, trustees must:
- (a) ensure that they collect all revenue that is due to the charity and that all assets are appropriately safeguarded
  - (b) make sure that the assets of the charity are used only to support its purposes (i.e., in line with the charitable objects) and comply with any particular restrictions;
  - (c) not take inappropriate risks with the assets of the charity, for example over committing in terms of financial obligations;
  - (d) ensure that appropriate care is taken when investing the assets of the charity or borrowing; and
  - (e) be satisfied, at all times, that the financial resources of the charity are sufficient to meet the ongoing financial commitments.
- 8.1.3 Various financial functions may be outsourced or delegated (e.g., accounting services, payroll, fundraising, custodianship, nominee services and investment management), but this does not absolve the trustees from their legal duties. Appropriate procedures must be in place to monitor all financial activity.
- 8.1.4 Some charities may have a particular trustee who is appointed as the "Treasurer", or "Honorary Treasurer". Whilst this individual may have additional responsibilities delegated to them in relation to the finances of the charity, they do not have any extra or additional powers above those shared by all trustees, who remain equally responsible for the finances of the charity.
- 8.1.5 If trustees fail to comply with their duties and this results in a financial loss to the charity, or the charity is unable to meet its financial obligations, this may result in the trustees being personally liable (irrespective of whether or not the charity is a limited liability entity).

### 8.2 Financial Controls and Responsibilities

- 8.2.1 In many charities the trustees will not be able to be involved on a day-to-day basis in the management of the finances. Therefore, in order to ensure that the charity's funds are applied correctly and that all funds are properly safeguarded, appropriate controls need to be put in place. The trustees should consider the Charity Commission's guidance on "Internal Financial Controls (CC8)".
- 8.2.2 Where financial matters are delegated to employees, volunteers or third parties, the trustees need to ensure that robust internal and external controls are in place, and that the controls are working properly. This includes ensuring that the limits of any delegation are within the trustees' authority (see [section 4.12](#) for more detail about trustees' delegation powers).
- 8.2.3 Where possible:
- (a) financial functions should be segregated to avoid a single person being able to initiate, process and record a transaction (for example the person who places a purchase order for goods or services, should not be the same person who authorises the payment of the invoice for the goods or services); and
  - (b) payments should be authorised by two trustees (or by authorised signatories approved by the trustees where appropriate levels of authorisation have been set by delegation).
- 8.2.4 In larger charities it may be appropriate for different tasks and approvals to be delegated to different individuals within the charity, depending upon authorisation levels set by the trustees considering the risk associated with each activity.



- 8.2.5 In smaller charities it may not be possible to achieve segregation of all tasks, due to the limited number of employees and the trustees will need to consider appropriate controls to manage risks.
- 8.2.6 Financial controls should be set out in a written policy and cover:
- Segregation and delegation of financial duties.
  - Monitoring of financial activities.
  - Ensuring appropriate information is provided to trustees.
  - Processes for monitoring receipt of income and ensuring that funds received in cash or by cheque are banked promptly and properly accounted for.
  - Authorisation processes for all expenditure and retention of appropriate documentation to support expenditure.
  - Recording the ownership and insurance of assets and management of investments.
  - Fund Accounting.
- 8.2.7 It is important to ensure that appropriate controls are in place to manage all payments made to trustees. Trustees can claim out-of-pocket expenses incurred in carrying out their duties but cannot receive any other payments or benefits unless they are authorised by the charity's governing document. The charity should have a written policy making it clear what the Trustees consider to be expenses that can be claimed (e.g., costs of travelling to and from Trustee meetings etc.), the appropriate level of such expenses and the process for claiming reimbursement. No trustee should be able to authorise and/or pay their own expense claims from the charity's funds. **Charities that are Registered Providers of Social Housing should be aware that there are further restrictions on payments to members which would prevent payments to any trustee who is also a member of a company limited by guarantee or CIO<sup>120</sup>.**
- 8.2.8 In order to qualify for charity tax reliefs, the charity needs to be recognised by HMRC as a charity (see [section 8.10.1](#)). As part of this process, it is necessary to inform HMRC of:
- up to 2 "authorised officials" who can manage the charity's tax affairs (these can be nominees appointed from outside of the charity, e.g., an agent); and
  - between 2 and 4 "responsible persons" who are legally accountable for running the charity (e.g., the Trustees).

If these individuals change it is necessary to inform HMRC.

#### Further resources:



- Charity Commission guidance: [Internal Financial Controls](#)
- The Almshouse Association website: see **Model Financial Controls Policy** in [Model Policies and Templates](#)

### 8.3 Accounting Records and Reporting

- 8.3.1 All charities must keep proper books and accounting records. There are three levels of detail:

Type	Detail
Accounting Records	Records showing the details of each and every financial transaction carried out by the charity.
Management Accounts & Budgets	Reports that are prepared for the trustees and/or the staff of the charity enabling financial performance to be monitored so appropriate decisions can be taken. These will often compare



Type	Detail
	actual expenditure to budgets, without detailing each individual transaction.
Annual Accounts	The accounts that are published each year (and subject to audit or independent examination as appropriate) to record the charity's financial position as the end of each financial year of operation.

8.3.2 Accounting Records:

8.3.3 The trustees must ensure that the charity keeps appropriate accounting records which are sufficient to show and explain all of the charity's financial transactions, and which enable them to show at any point, with reasonable accuracy, the financial position of the charity<sup>121</sup>.

8.3.4 The accounting records must include<sup>122</sup>:

- (a) Day to day entries showing all sums of money received and spent by the charity, including details of why the money was received or spent; and
- (b) Details of the assets and liabilities of the charity.

8.3.5 For charity's that are RSLs accounting records for the housing activities should be recorded separately from any other charitable activity, if any<sup>123</sup>.

8.3.6 The accounting records must be kept for at least 6 years from the end of the financial year in which the transaction is made<sup>124</sup>. The records include the underlying documents, not just the accounting entries. In some cases, records may need to be kept longer, for example:

- (a) if they relate to a transaction that covers more than one accounting period;
- (b) if they relate to assets that have been purchased which are expected to last longer than 6 years; or
- (c) the charity is late in carrying out its statutory reporting.

8.3.7 There are no legal requirements as to how accounting records should be maintained, and the charity can use any appropriate method of bookkeeping (e.g., a manual system, computerised records and/or handwritten records). It is recommended that for convenience and accuracy accounting records are kept in a computerised system and, where possible, that appropriate accounting software is acquired by the charity for this purpose. Whilst the trustees will need to consider the cost and suitability of such software, in many cases this can reduce the cost of producing the management accounts, budgets and annual accounts.

8.3.8 Appropriate ledgers will need to be maintained showing all transactions where money is received or expended. As a matter of good practice entries should be made as and when transactions occur. In each case it is recommended that the transaction shows:

- (a) The date.
- (b) The name of the payee / payor.
- (c) A narrative description.
- (d) The cheque / invoice / paying in identification number.
- (e) The amount of the transaction.
- (f) A suitable cross reference to the supporting documentation.

8.3.9 If the charity maintains a petty cash float, then separate records should be kept of the petty cash expenditure. All transactions from the petty cash float should be supported by receipts, and the trustees should check the petty cash balance and records on a regular basis to ensure that they reconcile.



- 8.3.10 The charity must keep a record of all liabilities and should maintain a purchase ledger recording all outstanding invoices and other liabilities, showing the amount owing at the point the liability is incurred (e.g., upon receipt of an invoice) and the subsequent payment.
- 8.3.11 Where the charity employs staff it will be necessary to operate an appropriate payroll system and comply with all obligations in relation to accounting for PAYE, National Insurance and pension contributions. In particular, appropriate systems will need to be in place to record the payment of expenses and other benefits in kind to employees. It is recommended that payments to employees are made by direct payment to individuals' bank accounts, rather than in cash or by cheque. All such payments should be authorised by a trustee (or where appropriate a member of staff who has been authorised by the trustees for this purpose) who has not been involved in the preparation of the payroll summary.
- 8.3.12 Withdrawals from any bank account whether made online or by cheque should be authorised by two signatories. The signatories should be trustees unless the trustees have authorised a member of staff to make withdrawals. Any authorisation of a member of staff should be recorded in writing which also makes clear the appropriate levels of authorisation (e.g., financial limits). In some exceptional cases it may be appropriate to authorise withdrawals by one signatory, but this should be limited to small amounts.
- 8.3.13 If credit cards are provided for use by members of staff and/or trustees, there should be clear guidance as to how such cards are to be used, including the keeping of receipts and appropriate limits should be set for each card. The credit card account should be reconciled on a regular basis, by an individual other than the card holder, and individuals should be required to account for any discrepancies.

#### Management Accounts & Budgets:

- 8.3.14 There is no legal requirement to produce management accounts and/or to prepare budgets. However, the use of management accounts and budgets is an essential tool for trustees to enable them to ensure that the charity is managing its resources effectively and that it will be able to continue to meet its on-going financial obligations.
- 8.3.15 The trustees should prepare an annual budget for the charity before the start of each financial year, showing the anticipated income and expenditure.
- (a) Charities should not (and in some cases cannot) accumulate income, unless this is for a specific purpose such as a particular project or the building up of reserves ([see section 8.7](#)), so should plan for income to cover all anticipated expenditure, with a small balance in hand.
  - (b) In preparing budgets, trustees should be clear whether the figures provided are intended to be targets for expenditure and income, or whether they may be treated as authorisation for expenditure to be incurred by senior management or employees if the expenditure is within the budgeted figure.
  - (c) Trustees should have clear objectives for the forthcoming year and make realistic assessments of future costs, based upon historic performance, future developments and current market trends (e.g., inflation).
  - (d) In some cases, trustees may consider it appropriate to make longer term budgets and plans that go beyond the end of the financial year and cover several accounting periods (for example if a large project is being undertaken).
  - (e) The budget will be prepared on the basis of assumptions. These assumptions should be clearly recorded and should be reviewed throughout the financial year to ensure that they remain appropriate.
  - (f) Budgets can be prepared on either a:
    - (i) Receipts and payments basis: where items of income and expenditure will always be shown in the year when they occur and the budget will show the estimated months during the year when the various receipts and payments are expected to occur; or
    - (ii) Accruals basis: where items of income and expenditure will be spread over the relevant time period that the income or expenditure is intended to cover. In this case the budgeted figure for a month may simply be 1/12 of the annual figure, but

where activity and costs vary seasonally (e.g., heating, lighting and maintenance etc.) it may be more appropriate to phase the budget so that at any point in time realistic comparisons of budget and actual expenditure can be made.

- (g) The trustees, in preparing the budget, will need to consider how much detail to show in the breakdown of the various categories of income and expenditure.
  - (h) Where the charity has restricted or designated funds ([see section 8.8](#)) these should be set out separately for the purposes of the budget.
- 8.3.16 Throughout the financial year the charity should prepare management accounts that enable the trustees to compare the charity's performance to date alongside the budget predictions and, where appropriate, prior period figures. In some cases, it may be appropriate to include figures to show the actual variance (positive or negative) against the planned budget for each item in the accounts. The management accounts should be presented to the trustees on a regular basis with trustees being provided with a printed copy for them to review and consider in advance of their meetings, so that they can prepare to ask appropriate questions. In larger charities the management accounts should be accompanied by a report highlighting the important figures and, where there are significant variances, providing the trustees with sufficient information for them to assess the reasons for the variance and what action, if any, the trustees need to take in light of the variance.
- 8.3.17 The size and complexity of the charity's financial affairs will determine how complicated the budget and management accounts need to be.

#### Further resources:



- The Almshouse Association website: see **Specimen Outline Budget** in [Model Policies and Templates](#)

#### Annual Accounts:

- 8.3.18 The annual accounts record the charity's financial position at the end of its financial year.
- 8.3.19 The format for the accounts depends upon the charity's structure.

Type of Charity	Type of Accounts required
Charities that are not companies and whose annual gross income was £250,000 or less during the financial year	<p>Receipts and payments: these are accounts which:</p> <ul style="list-style-type: none"> <li>(a) summarise all money received and paid out by the charity during the financial year; and</li> <li>(b) provide a statement of the assets and liabilities at the end of the year.</li> </ul>
Charities that are companies Charities that are not companies, but whose annual gross income exceeds £250,000	<p>Accruals: these are accounts which have been prepared in compliance with the "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)" referred to as the "Charities SORP (FRS 102)".</p>

	<p>These accounts are required in accountancy terms to show a “true and fair value” and include:</p> <ul style="list-style-type: none"> <li>(a) a balance sheet showing the charity’s financial position at the end of the financial year;</li> <li>(b) a statement of financial activities (referred to as the “SoFA”) showing all income and expenditure during the year;</li> <li>(c) for charitable companies, a statement of income and expenditure unless this is included in the SoFA; and</li> <li>(d) explanatory notes.</li> </ul> <p>These accounts must also comply with The Charities (Accounts and Reports) Regulations 2008.</p>
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#### Further resources:



- Charity Commission [“Receipts and payments accounts pack \(CC16\)”](#)
- Charity Commission [“Accruals accounts pack \(CC17\) – SORP FRS 102](#)
- [Charities SORP \(FRS 102\) \(second edition – October 2019\)](#)

## 8.4 Reporting

8.4.1 Depending upon the type of charity, and the income of the charity, there are different filing and reporting requirements. The accounting and reporting framework is set out in:

- (a) the Charities Act 2011;
- (b) the Charities (Accounts and Reports) Regulations 2008; and
- (c) the 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)

8.4.2 Reporting requirements for registered charities that are not companies or CIOs:

Gross Income does not exceed £25,000	
Basis of preparation of accounts	Either Receipts and Payments accounts or accruals accounts.
External scrutiny	No requirement unless specified in the charity’s governing document.
Trustees’ Annual Report	Must be prepared.
Annual Return	Required if gross income over £10,000.



Filing obligations	Annual return must be filed with the Charity Commission within 10 months of the end of the financial year.
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Gross Income exceeds £25,000 but does not exceed £250,000	
Basis of preparation of accounts	Either Receipts and Payments accounts or accruals accounts.
External scrutiny	Accounts must be checked, but Trustees can decide whether this is by independent examination or audit by a registered auditor.
Trustees' Annual Report	Must be prepared.
Annual Return	Required.
Filing Obligations	The Annual Return, Trustees' Annual Report and Accounts must be filed with the Charity Commission within 10 months of the end of the financial year.

Gross Income exceeds £250,000 but does not exceed £1,000,000 and total assets do not exceed £3.26 million	
Basis of preparation of accounts	Accruals accounts.
External scrutiny	Accounts must be checked, but Trustees can decide whether this is by independent examination or audit by a registered auditor.
Trustees' Annual Report	Must be prepared.
Annual Return	Required.
Filing Obligations	The Annual Return, Trustees' Annual Report and Accounts must be filed with the Charity Commission within 10 months of the end of the financial year.

Gross Income exceeds £1,000,000 or whose total assets exceed £3.26 million and gross income exceeds £250,000	
Basis of preparation of accounts	Accruals accounts.
External scrutiny	Audit by a registered auditor.
Trustees' Annual Report	Must be prepared.
Annual Return	Required.



Filing Obligations	The Annual Return, Trustees' Annual Report and Accounts must be filed with the Charity Commission within 10 months of the end of the financial year.
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#### 8.4.3 Reporting requirements for charitable companies:

Charitable Companies	
Basis of preparation of accounts	Accruals accounts and a Directors' Report in accordance with the Companies Act 2006.
External scrutiny	Accounts must be subject to audit by a registered auditor if gross income exceeds £1 million, or gross assets exceed £3.26 million and gross income exceeds £250,000. In all other cases the charity may have either an audit or independent examination.
Trustees' Annual Report	Must be prepared (can be an expanded version of the Directors' Report).
Annual Return	Required.
Filing Obligations	The Annual Return, Trustees' Annual Report and Accounts must be filed with the Charity Commission within 10 months of the end of the financial year and with Companies House within 9 months of the end of the financial year.

#### 8.4.4 Reporting requirements for CIOs:

CIOs	
Basis of preparation of accounts	<p>If the gross income is less than £250,000 the CIO can prepare receipts and payments accounts.</p> <p>If the gross income is £250,000 or above the CIO must prepare accruals accounts.</p>
External scrutiny	Accounts must be subject to audit by a registered auditor if gross income exceeds £1 million, or gross assets exceed £3.26 million and gross income exceeds £250,000. In all other cases the charity may have either an audit or an independent examination.
Trustees' Annual Report	Must be prepared (can be an expanded version of the Directors' Report).
Annual Return	Required.
Filing Obligations	The Annual Return, Trustees' Annual Report and Accounts must be filed with the Charity Commission within 10 months of the end of the financial year.





- 8.4.5 The trustees must confirm in their trustees' annual report that they have had regard to the Charity Commission's guidance on public benefit ([see section 2.2.6](#))<sup>125</sup>.

**Further resources:**



- Charity Commission guidance: [Charity Reporting and accounting: the essentials](#)

## **8.5 Banking**

- 8.5.1 The charity will have the need for a bank account including a current account, a capital account and a savings account. When choosing a bank account, the charity should:
- (a) consider the reputation and financial rating of the bank and check whether it is authorised by the Financial Conduct Authority;
  - (b) identify whether the bank is part of a group and, if so, whether the charity will as a result be holding funds in a banking group in excess of the amount protected by the Financial Services Compensation Scheme (i.e., deposits of up to £85,000);
  - (c) make sure that the bank operates accounts suitable for charities;
  - (d) identify whether the bank operates appropriate online facilities for charities (i.e., the use of dual authorisation for online banking etc.);
  - (e) consider the interest that may be paid on the account (depending upon whether funds will be kept in the account for long periods);
  - (f) consider the bank charges that will apply for different transactions and/or services;
  - (g) identify how the account will be used and the frequency of deposits and withdrawals; and
  - (h) make sure that the accounts which are opened in the correct name of the charity, with the correct individuals on the mandate.
- 8.5.2 If the charity is considering opening a savings account, then the trustees should review the level of funds that will be held on deposit and assess the potential interest that may be earned against other options for the investment of the funds. Whether the funds should be invested as opposed to deposited in a bank account is likely to depend upon their anticipated use (i.e., will they be required in the short to medium term, say 1 to 5 years, for a particular project) and the charity should consider having an appropriate policy in place in relation to the keeping of funds on deposit.
- 8.5.3 Some organisations operate a "Common Deposit Fund", which has charitable status and enables charities to collectively pool their deposits in one fund, leading to better rates of interest.
- 8.5.4 The bank should pay interest gross to the charity and, if this is not the case, the charity should discuss this with the bank and also apply to HM Revenue & Customs for a rebate of the tax that has been paid.
- 8.5.5 When an account is opened the charity will need to decide:
- (a) whether cheque books are required and, if so, whether all cheques will require two signatories or whether, for amounts below a certain level, one signatory may suffice;
  - (b) whether all trustees need to be on the banking mandate and how changes will be reported to the bank; and
  - (c) clear policies for the use of any debit cards or credit cards and the setting of appropriate limits on the use of such cards.
- 8.5.6 The charity is likely to make use of electronic or online banking as a convenient way to manage transactions. When using online banking, the charity needs to ensure that the same level of internal financial controls apply as would apply if the charity were using traditional non-online methods of banking. In particular, the charity should ensure that no one individual has the ability to control significant amounts of the charity's funds. Whilst many banks operate on the basis of single authorised

signatories to approve transactions, the Charity Commission does not recommend that any charity operates on this basis. The Charity Commission's guidance recommends that charities should always, where possible, use online banking facilities that provide for dual authorisation of transactions. Where this is not possible, the ability to make transactions by a single authority should be closely monitored and limits on the amounts that can be transferred should be set with the bank.

- 8.5.7 When making any decision about banking arrangements the charity should consider taking independent financial advice and ensure that the advice is provided by someone suitably qualified.

#### Further resources:



- [Financial Services Compensation Scheme](#)
- Charity Commission guidance: [Internal financial controls for charities](#)
- Charity Commission guidance: [Common Investment Funds and Common Deposit Funds: a basic guide to their regulation](#)

## 8.6 Investments

- 8.6.1 Charities invest to enable them to further their charitable aims. Investment may take various forms:

- (a) Financial investment – the purpose of which is to maintain the charity's capital whilst at the same time generating the best financial return possible (considering appropriate levels of risk) that can then be used to further the charity's objects. When engaging in financial investment, the charity needs to distinguish between investment and activity which would not be considered investment activity, for example:
  - (i) engaging in trading activity (e.g., selling goods, services of other assets for money);
  - (ii) raising funds by means of donations; and
  - (iii) buying assets on a speculative basis, on the assumption that they will rise in value.
- (b) Programme related investment (often referred to as social investment) – the purpose of which is to use the charity's assets to directly further the charity's objects in a way which may also produce some financial return to the charity. For example, instead of making a grant to a resident to fund the purchase of a mobility scooter, making a loan instead at a low rate of interest.
- (c) Mixed motive investment – investments that cannot be justified as either a financial investment or a programme related investment, but which fall between the two.

- 8.6.2 This chapter focuses on financial investments, on the basis that these are relevant to the routine day to day operation of a charity. If the charity wishes to engage in programme related investment or mixed motive investment, specific advice should be taken on the trustees' powers and duties in this area.

- 8.6.3 When making financial investments, the trustees need to be clear as to their investment powers (which will depend upon how the charity is constituted ([see section 3.2](#))).

- (a) Unincorporated charities:
  - (i) Normally there will be an express power of investment in the Governing Document.
  - (ii) In addition, the trustees can rely upon the statutory general power of investment<sup>126</sup> (the "general power") which authorises them to make any kind of investment that they could make if they were the absolute owners of the charity's assets provided that the general power is not restricted by the Governing Document and the investment is not in land. (Any restriction in the Governing Document will not apply if it was created prior to 3 August 1961<sup>127</sup>.)



- (iii) There is a separate statutory power permitting the trustees to invest in freehold or leasehold land<sup>128</sup>.
  - (b) Incorporated charities:
    - (i) Normally there will be an express power of investment in the Governing Document.
    - (ii) The general power does not apply to incorporated charities, unless the provisions in the Governing Document seek to rely upon the general power (i.e., if they say that the charity has the power to invest in accordance with the general power).
- 8.6.4 When exercising their powers, the trustees need to be clear as to their duties (which will depend upon how the charity is constituted (see section 3.2).
  - (a) Unincorporated charities:
    - (i) Trustees must keep their investments under review from time to time to consider if they remain appropriate.
    - (ii) Before exercising any power of investment or when reviewing their investments, the trustees must obtain and consider proper advice<sup>129</sup>. This is advice from someone who is reasonably believed to be qualified to give advice on financial matters, and who is known to have practical experience of financial and other matters relating to the proposed investment. The individual need not necessarily be authorised by the Financial Conduct Authority and could be a trustee or even an employee. However, the trustees should consider the extent to which advice from a co-trustee or employee is likely to be appropriately qualified and be objective and/or impartial.
    - (iii) When exercising any power of investment, the trustees have a duty to consider the standard investment criteria: ensuring that the investments being made are suitable and that the investments of the charity are, overall, sufficiently diversified<sup>130</sup>.
  - (b) Incorporated charities:

The trustees do not have any similar duties set out in legislation, but both the court and the Charity Commission take the view that, for all practical purposes, the trustees should be considered to have the same duties as trustees of an unincorporated charity.
- 8.6.5 Charities will usually invest in quoted shares and securities, authorised unit trusts and collective investment schemes, land/property or cash deposits. If the charity is considering investing in other types of investments then the trustees need to consider carefully whether the investment will be considered “non-charitable expenditure” for tax purposes<sup>131</sup>. If the charity makes an investment that is outside of the classes of investment that are considered charitable expenditure, the charity may lose the benefit of tax exemptions. There are established investment funds that are operated for charities, some of which are “Common Investment Funds”, established under legislation that enable a range of charities to pool their investments in a common fund, thereby spreading their risk and meeting diversification requirements.
- 8.6.6 Some charities consider it appropriate to be seen to invest on an ethical basis, i.e., ensuring that the charity’s investments reflect the charity’s own values and are not contrary to its aims. Any charity wishing to invest in this manner needs to ensure that its investment policy complies with its Governing Document and the law in this area<sup>132</sup>. If the trustees wish to consider non-financial criteria when making investment decisions:
  - (a) they have a discretion to exclude certain types of investments. If the trustees are of the reasonable view that certain types of investment potentially conflict with the charity’s objects they may, after considering the likelihood and seriousness of the potential conflict and the likelihood and seriousness of any potential financial effect from the exclusion of such investments, exclude such investments;
  - (b) they can consider the risk of losing support from donors and damage to the charity’s reputation generally and especially among its beneficiaries;



- (c) they should be careful when making decisions on purely moral grounds to recognise that there may be differing legitimate moral views on certain issues, and that no-one particular view should have precedence; and
  - (d) they should formulate a policy that is in the best interests of the charity and its objects, considering all relevant factors.
- 8.6.7 If the charity has significant financial investments, trustees may consider it appropriate to employ a professional investment advisor/manager to manage the charity's investments.
- (a) The investment advisor/manager can be engaged either on an advisory and execution basis (where the advisor provides advice to the trustees and then acts on their instructions) or on a discretionary basis (where the advisor/manager can within certain parameters make investment decisions on behalf of the trustees). If the charity decides to employ the investment advisor/manager on a discretionary basis, the trustees need to ensure that they have the appropriate power to delegate their investment powers to the professional investment advisor.
    - (i) Incorporated charities: normally have an express power of delegation in their Governing Document.
    - (ii) Unincorporated charities: normally have an express power of delegation in their Governing Document but if they do not, there is a statutory power<sup>133</sup>, provided this is not restricted by the Governing Document.
  - (b) If relying on the statutory power the charity must have a written agreement in place with the advisor/manager<sup>134</sup> and the agreement must not (unless reasonably necessary) limit the liability of the advisor or permit the advisor to act when they are conflicted<sup>135</sup>. Whilst this does not apply to incorporated charities, again both the courts and the Charity Commission take the view that, for all practical purposes, the trustees should be considered to have the same duties as trustees of an unincorporated charity.
  - (c) In addition, before exercising the statutory power the trustees must have a written investment policy<sup>136</sup>. Whilst this does not apply to incorporated charities, again both the courts and the Charity Commission take the view that, for all practical purposes, the trustees should be considered to have the same duties as trustees of an unincorporated charity. The policy should cover:
    - (i) the scope of the charity's investment powers, including details of any restrictions on those powers;
    - (ii) the charity's investment objectives;
    - (iii) the charity's attitude to risk;
    - (iv) the extent of the charity's assets available for investment, and the potential timing for the use of the assets or any income requirements;
    - (v) the types of investment that the charity wishes to make and whether there are any restrictions on the types of investment that the charity wishes to make;
    - (vi) who can make investment decisions, and the extent to which any investment advisor can make decisions on behalf of the trustees;
    - (vii) suggested benchmarks for monitoring performance; and
    - (viii) the frequency with which investment performance will be reported to the trustees.
- 8.6.8 If investing directly in property (as opposed to in a property holding unit trust), the charity should take appropriate advice from a chartered surveyor or land agent that has expertise in managing the type of property in question (e.g., industrial or commercial properties, retail properties, agricultural land or residential properties). The charity should ensure that the properties are properly insured, that the property portfolio is significantly diversified and that when disposing of any property the charity follows the appropriate steps (see section 12.5). If property is leased to third parties, then the charity should ensure that rent reviews are carried out on a regular basis in accordance with the lease and that steps

are taken to ensure that tenants are complying with their obligations under the lease (e.g., in terms of repair and insurance).

- 8.6.9 When investing in shares and funds, in particular if investing permanent endowment funds, the trustees may need to consider whether the investment is in income or accumulation shares.
- (a) Returns from income shares are paid out as income, which can then be used to further the charity's objects.
  - (b) Returns from accumulation shares are treated as capital and, therefore, if the shares represent permanent endowment, the returns must be added to the permanent endowment and cannot be spent.
- 8.6.10 When investing, trustees can select investments that either generate income or which generate capital growth, or a mixture. However, if the trustees are investing permanent endowment, they may feel it necessary to select investments that generate a fair balance between capital growth and income, this may not necessarily produce the best total level of economic return that can be achieved. Charities with permanent endowment are now able to adopt a total return approach to investment, which enables them to invest in a way that provides enough income for current needs whilst maintaining capital growth<sup>137</sup>. If trustees exercise the power this enables them to allocate returns to be either income or capital (subject to limits). The use of the power is complicated and the trustees should take professional advice if considering exercising the power to invest on a total return basis.
- 8.6.11 Overall, the trustees must at all times consider what risk it is appropriate for the charity to bear in relation to its investments. The value of investments will go up and down depending upon market circumstances and the trustees need to monitor the performance of the charity's investments, whilst recognising the long-term investment objectives.

#### Further resources:



- Charity Commission guidance: [Charities and investment matters: a guide for trustees \(CC14\)](#)
- The Almshouse Association website: see **Model Investment Policy** in [Model Policies and Templates](#)
- Charity Commission guidance: [Common Investment Funds and Common Deposit Funds: a basic guide to their regulation](#)
- Charity Commission guidance: [Total return investment for permanently endowed charities](#)

## 8.7 Reserves

- 8.7.1 The trustees of an unincorporated charity (see section 3.2) have a duty to ensure that:
- (a) the income of the charity is used as income and not accumulated; and
  - (b) the income is used to further the charity's purposes within a reasonable period of time after being received.
- 8.7.2 Whilst the legal principles in paragraph 8.7.1 do not apply to incorporated charities (see section 3.2) the Charity Commission's view is that there is a legitimate expectation that corporate charities will apply the same principles.
- 8.7.3 However, it is established good practice for charities to hold reserves of income to enable them to ensure the smooth and effective operation of the charity over a period of time. In most charities there will be either an express or an implied power to enable the trustees to hold reserves.
- 8.7.4 A charity's reserves are made up of its unexpended income that is available to be freely spent by the charity on any of the charity's purposes. The following types of funds would not be included as part of a charity's reserves:
- (a) permanent endowment (i.e., capital funds that cannot be spent or assets which are held for particular uses);
  - (b) expendable endowment (i.e., capital funds that can be spent in certain circumstances);



- (c) income which has been converted into endowment (i.e., where the terms of a charitable trust expressly provided that income could be accumulated as capital over a period of time);
  - (d) designated funds (i.e., unrestricted funds that the trustees have set aside for a particular future purpose, which would include ERF and CMF funds ([see section 8.8](#));
  - (e) restricted funds (i.e., funds that the charity holds to be used for specific purposes which are narrower than the charity's objects); or
  - (f) fixed assets held for the charity's use, the value of which could only be realised by disposal.
- 8.7.5 It is important for the charity to maintain sufficient reserves as "working capital" to enable the charity to mitigate financial risks from unexpected events. Keeping reserves enables the charity to allow for uncertainties inherent in the budgeting process. This enables the charity to demonstrate financial resilience.
- 8.7.6 The charity does, however, need to be able to justify (to funders, stakeholders, residents, the Charity Commission etc.) the basis on which it is keeping reserves and should therefore have a well drafted reserves policy setting out the rationale for the level of reserves that is being maintained. The policy should not be defensive about the keeping of reserves, it merely needs to factually justify the purpose for keeping reserves and the justification for the amount at which the reserves have been set.
- 8.7.7 The level of reserves will differ from one charity to another, but the trustees should consider:
- (a) forecasts for the charity's annual income and the extent to which sources of income are reliable / dependable from year to year;
  - (b) forecasts for the charity's annual expenditure based upon planned activity;
  - (c) the potential risks and unforeseen circumstances that may arise for which reserves may be needed; and
  - (d) an assessment of the potential risks coming to fruition and, if they did, the likely impact on the charity's financial position.
- 8.7.8 The reserves policy should:
- (a) explain why the charity needs to keep reserves;
  - (b) set out the level of reserves that the charity thinks it is appropriate to maintain;
  - (c) set out the steps that the charity is going to take to build its reserves to the necessary level if the charity is not currently in a position to maintain reserves at a sufficient level; and
  - (d) detail how often the reserves and policy will be reviewed (i.e., changes in the value of underlying investments may lead to periods of time when the charity is not actually maintaining the level of reserves that it may feel it needs).
- 8.7.9 The charity will need to report on its reserves policy in its trustees' annual report ([see section 8.4](#)).

**Further resources:**

- The Almshouse Association website: see **Model Reserves Policy** in [Model Policies and Templates](#)
- Charity Commission guidance: [Charity reserves: building resilience \(CC19\)](#)
- Charity Commission guidance: [How to set a reserves policy for your charity](#)

**8.8 Extraordinary Repair Fund (ERF) and Cyclical Maintenance Fund (CMF)**

8.8.1 It is recommended that all charities accumulate income and build up funds that can be used for:

- (a) an Extraordinary Repair Fund ("ERF"): this fund would be used for major one-off repairs and improvements (for example providing a new roof or heating system; etc.); and



- (b) a Cyclical Maintenance Fund (“CMF”): this fund would be used for regular planned maintenance which is carried out at infrequent, but regular, intervals (for example work arising from the quinquennial inspection, such as internal and external decoration).
- 8.8.2 In many cases the charity’s Governing Document will make specific provision for such funds, in which case such funds would be treated as restricted funds, and the money held in these funds can only be used for the specific stated purposes. If the charity’s Governing Document does not make provision for such funds, then the trustees should instead create designated funds to earmark appropriate amounts for these purposes (but such funds remain available for use for the general purposes of the charity).
- 8.8.3 The trustees should consider what amount is appropriate to set aside on a regular basis for the ERF and CMF, and this should be set as part of considering the charity’s annual budget.
- 8.8.4 The funds should be invested appropriately considering the charity’s future plans and programme of repair and modernisation. If the charity’s Governing Document makes provision for the establishment of the funds it may state how the funds are to be invested.
- (a) The funds held in the CMF are likely to be accessed on a regular basis and therefore should be invested in a manner that enables funds to be withdrawn at short notice without penalty;
- (b) The funds held in the ERF should be built up over time and are likely to be required on a less regular basis, so a longer-term investment may be appropriate (depending upon the charity’s future plans).
- 8.8.5 The Almshouse Association publishes minimum recommended figures that should be set aside each year for ERF, CMF and routine maintenance in its Specimen Outline Budget and on its website. The recommended figures are revised to cater for increases in building costs on advice from the Association’s Panel of Consultants.

**Further resources:**

- The Almshouse Association website: see **Specimen Outline Budget** in [Model Policies and Templates](#)

**8.9 Insurance**

- 8.9.1 The trustees have a duty to protect the charity’s assets and resources. As part of managing risks (see [section 7.2](#)) the trustees should consider taking out insurance. In particular, the charity may consider:
- (a) buildings insurance;
- (b) contents insurance (for the charity’s contents not those of the residents. It is advisable to maintain a current asset register and details of any valuable historical items. It is also recommended that photographs are taken to support any future claim and kept secure away from the premises);
- (c) event insurance;
- (d) professional indemnity insurance; and
- (e) public liability insurance (for example to cover contractors or third parties on the charity’s property and a minimum level of cover of £5 million is recommended).
- 8.9.2 The trustees have the power to insure property and assets<sup>138</sup> and this is an appropriate use of the charity’s resources. The trustees need to consider the level of risk faced by the charity and the insurance that is put in place should be proportionate to their assessment of the level of risk.
- 8.9.3 By law the charity is required:
- (a) if it has employees, to have employer’s liability insurance with a minimum insurance cover of £5 million<sup>139</sup>. A certificate is issued at each renewal which has to be displayed in a prominent position or can be kept electronically. If this is kept electronically, it must be available to all





- employees. Certificates no longer need to be retained for 40 years, but past insurance may need to be evidenced in later years so should be kept; and
- (b) if it has or uses motor vehicles, to have motor insurance.
- 8.9.4 The trustees should consider taking professional advice from an insurance broker when deciding what insurance might be appropriate for the charity.
- 8.9.5 The most significant asset of the charity is likely to be the almshouses. The trustees should ensure that the almshouses are properly insured for an appropriate sum in order to be certain that, in the event of a claim on the policy, it provides sufficient cover. It is prudent to have a fire insurance valuation carried out at least every five years. This can be part of a quinquennial property inspection. Failure to insure for the full reinstatement value of the building may result in the sum insured being inadequate in the event of a major loss.
- 8.9.6 Normally the buildings insurance taken out in relation to the almshouses should be sufficient to meet the cost of:
- (a) any work necessary to demolish the buildings (if damaged beyond repair) and to clear the site;
  - (b) professional fees for any replacement building (e.g., architect, surveyor, etc.);
  - (c) replacing the buildings with buildings in a similar style (if this is likely to be a planning requirement), or in a suitable style to be used as almshouses; and
  - (d) complying with any relevant planning requirements or building regulations.
- 8.9.7 The trustees may also consider taking out trustee indemnity insurance to cover them personally against any legal claims that are made against them for a breach of trust, or a breach of duty or negligence committed by them in their capacity as trustees. Trustee indemnity insurance is considered a form of personal benefit for the trustees, and therefore if it is to be paid for by the charity it must be properly authorised before it can be taken out. In most cases the trustees will be able to rely upon either the statutory power<sup>140</sup> or an express power in the Governing Document. Any insurance policy that is purchased must comply with the statutory provisions and must exclude the provision of any indemnity for any liability:
- (a) to pay fines imposed in criminal proceedings;
  - (b) to pay sums to regulatory authorities by way of penalty;
  - (c) in defending criminal proceedings where the trustee is convicted of any offence arising out of fraud or dishonesty, or wilful or reckless misconduct; and
  - (d) that arises out of any conduct which the trustee knew (or ought reasonably to have known) was not in the interests of the charity, or where they did not care whether or not it was in the best interests of the charity.
- 8.9.8 Under the Financial Conduct Authority regulations, The Almshouse Association cannot provide advice on the availability or suitability of insurance policies that may be suitable for charities. The Almshouse Association does not recommend professionals or those providing services and charities should therefore research the market. There are two insurers that offer special block policies specifically tailored for members of The Almshouse Association (see further resources below).
- 8.9.9 Residents are responsible for insuring their own possessions. Some building insurance policies may include the option to cover residents' contents at an extra cost. Mobility scooters are the responsibility of the resident and insurance should be arranged when purchasing the scooter. It is important to have this cover in place before a user brings their scooter on site. The insurance for the owner's legal liability to pay compensation and costs following accidental bodily injury to other persons including damage to their property whilst the scooter is in use is regarded as essential.
- 8.9.10 When damage occurs to insured property the insurance broker should be advised as soon as possible and quotations obtained for repair.
- 8.9.11 Policies may provide an emergency helpline should the loss occur outside of normal business hours. A note of this number should be kept in a safe place in a different location to the almshouses.



**8.9.12 Disaster and contingency planning:**

- (a) Contingency planning considers the consequences of a disaster occurring, such as a flood or fire, which would have a significant impact on the almshouses and residents. Detailed consideration should be given to contingency planning no matter how unlikely it may appear to be.
- (b) As a minimum, trustees should:
  - (i) check that the charity's insurance covers the cost of temporary housing;
  - (ii) keep a copy of the details of residents' next of kin, GP, solicitor and their addresses off site in case fire/flood destroys the office;
  - (iii) make sure any resident who is going away (or returning early) notifies the clerk or staff or a neighbour so that emergency services do not search for someone who is not on site;
  - (iv) arrange for the village hall or community centre to provide shelter in the short term (first few hours); and
  - (v) liaise with nearby almshouse charities, other housing providers and local hotels to take in people who cannot stay with relatives in the longer term.
- (c) Trustees should create a disaster recovery plan following an in-depth assessment of what issues the charity may face in the event of a major occurrence.

**Further resources:**

- Charity Commission guidance: [Charities and insurance](#)
- The Almshouse Association website: see **Model Disaster Recovery Plan** in [Model Policies and Templates](#)
- [Grout Insurance Brokers](#)
- [Higos Insurance Services Ltd](#)

**8.10 Direct Taxation**

- 8.10.1 Charities benefit from a number of exemptions from direct tax, provided they are recognised as a charity by HMRC. If the charity has not been recognised by HMRC it should apply online for recognition.
- 8.10.2 The definition of “charity” is different for the purposes of charity law<sup>141</sup> and tax law<sup>142</sup>. In particular, in order to be a charity for tax purposes the charity must demonstrate that the trustees are “fit and proper persons”<sup>143</sup>.
- 8.10.3 Charities will be exempt from paying on tax on most sources of income and gains, provided that the funds are used for charitable purposes, including:
  - (a) donations;
  - (b) profits from trading within specified limits ([see section 8.10.5](#));
  - (c) rental income;
  - (d) investment income (including interest) – provided that the investment was a qualifying investment for tax purposes<sup>144</sup>;
  - (e) gains from selling or disposing of property (provided the disposal was not part of a property development that would be viewed as trading) or shares;
  - (f) when buying property; and
  - (g) fundraising events.

**8.10.4 Charities are required to pay tax:**

- (a) on profits from trading that are above the specified limits ([see section 8.10.5](#));
- (b) on profits from the development of land or property;
- (c) in the form of VAT on purchases ([but see section 8.11](#));
- (d) in the form of business rates on non-domestic properties (subject to an 80% discount).

**8.10.5** If the charity provides goods or services to third parties (whether on a one-off basis or a regular basis), this is likely to be considered trading. For example, the sale of Christmas cards to raise funds for the charity would be considered trading. Profits from trading are only exempt if:

- (a) the trade is “primary purpose” trading, i.e., carried out to further the objects of the charity (e.g., the provision of nursing care or related services to residents);
- (b) the trade is mainly carried out by beneficiaries (e.g., if the residents manufactured and sold items to raise funds for the charity);
- (c) the turnover of the trade is below the small trading exemption which is:
  - (i) £8,000 if the charity’s total income is under £32,000;
  - (ii) 25% of the charity’s total income, if the charity’s total income is between £23,000 to £320,000; and
  - (iii) £80,000 if the charity’s total income is over £320,000.
- (d) It falls within specific exemptions relating to fundraising activity<sup>145</sup>.

**8.10.6** The trustees should carefully consider all sources of income to ensure that they are covered by a relevant exemption and, if any are not, take advice to decide how best to minimise the charity’s exposure to tax.**Further resources:**

- HMRC guidance: [Charities: detailed guidance notes on how the tax system operates](#)
- HMRC: [Get recognition from HMRC for your charity](#)
- Charity Commission guidance: [Trustees trading and tax: how charities may lawfully trade \(CC35\)](#)

**8.11 Value Added Tax****8.11.1** The taxation issue of most frequent interest to trustees is Value Added Tax (VAT). This is a complex subject and the following is a guide rather than an authoritative statement. The detail is subject to frequent review and change.**8.11.2** Output VAT - general principles:

- (a) VAT is a tax charged on supplies of goods or services by a VAT registered business. WMC is exempt or outside the scope of VAT and if no additional (taxable) income is received, charities are not entitled to register for VAT. Consequently, many charities are not registered and there is little benefit in doing so.
- (b) Where a charity sells a residential property for the first time the sale of the property may be zero-rated subject to certain conditions. In these circumstances it may be advantageous for the charity to register for VAT. If a charity is planning to sell property, it is advisable to take professional advice.
- (c) VAT is applicable on certain income sources such as the receipt of commercial rents (but only when an option to tax has been applied), management charges and charges for supplies of staff. Management charges can sometimes be considered outside the scope of VAT, e.g., supplies of staff between charities, if certain conditions are met.



Output VAT will only apply when the charity is registered for VAT. Registration for VAT will be compulsory if the VAT registration threshold in force at the time has been exceeded, otherwise VAT registration is voluntary.

8.11.3 Registration:

- (a) Almshouse charities must register for VAT if their taxable turnover from taxable activities (taxable at either full, reduced or zero rates) exceeds £85,000 p.a. (1st April 2020). The threshold is normally reviewed annually.
- (b) The definition of taxable activities includes the provision of:
  - (i) Public amenities, e.g., certain admission charges, sales of souvenirs, tea shop and so forth
  - (ii) Other amenities, e.g., shop.
  - (iii) Supplies of staff and administration services
- (c) The definition does not include the provision of residential accommodation or care, and consequently most almshouse charities do not need to register for VAT. It is important that trustees identify all sources of the charity's income and consider whether each is outside the scope of VAT, exempt or taxable at full, reduced or zero rates. Professional advice is essential.

8.11.4 Input VAT:

- (a) Input VAT is the tax charged on supplies to the charity. Unless there are special exemptions, VAT registered suppliers to the charity must charge VAT.
- (b) Unless registered for VAT, the charity will not be able to recover any of the tax. Even if registered, in certain situations only a proportion of the VAT charged can be recovered.

8.11.5 Buildings:

- (a) Most alteration and repair work to almshouses is subject to VAT except for some work related to disabled facilities.
- (b) If the construction work is zero-rated so are the materials, hardware, sanitary ware and other items normally installed as fixtures. However, they must be purchased through and fitted by the contractor. Combining the professional and construction work in one service, such as a design and build contract, means that the professional fees may, like the construction work, be zero-rated thus making a considerable saving.
- (c) Zero rating applies to:
  - (i) construction of a new building designed as a dwelling or to be used for relevant residential or charitable non-business purposes
  - (ii) construction of an annex to an existing relevant charitable building, providing it is capable of functioning independently, does not provide the main entrance to the building, and certain other conditions are met
  - (iii) provision, extension or adaptation of toilet and bathroom facilities provided the work is necessary for the disabled person (professional advice should be sought)
  - (iv) installation, repair or maintenance of vertical lifts provided the lift is installed for the purpose of facilitating the movement of disabled persons between the floors of that building and is supplied to a charity which provides either temporary or permanent residence for disabled people
  - (v) the supply of a stair lift designed for use in connection with a wheelchair
  - (vi) construction of ramps and widening a doorway or passageway to help a disabled person gain access to or move about within the building
  - (vii) supply or maintenance of emergency call systems designed to be capable of operation by a disabled person.



- (d) Subject to certain conditions, when charities undertake building projects which include the installation of energy saving materials, it is likely that the zero-rate of VAT will apply, up to 31 March 2027.
  - (e) The reduced rate applies to:
    - (i) renovating dwellings which have not been lived in for two years or more
    - (ii) converting a house into flats or bed-sits
    - (iii) converting a non-residential property into a multi-occupancy or care home or dwellings
    - (iv) converting bed-sits into self-contained flats
    - (v) converting bed-sit accommodation into a single household or vice-versa
  - (f) In some cases, it is necessary for the charity to issue a reduced rate VAT certificate to the contractor and it may be necessary to obtain a ruling from HM Revenue and Customs that the building work qualifies for the reduced rate.
  - (g) Since 2012, HMRC have withdrawn the zero-rating relief which applied to repair costs relating to listed buildings.
  - (h) As the rules relating to building alterations are complex it is essential that professional advice is taken.
- 8.11.6 Equipment: Almshouse charities are able to buy specified equipment e.g., medical appliances and other equipment designed solely for use by disabled people, free of VAT. A certificate needs to be provided to the supplier. Zero-rating applies to the construction of ramps, widening of corridors and doors where the work is to assist movement of disabled people. Altering existing pathways across almshouse gardens may also qualify for VAT zero-rating.
- 8.11.7 Investments: The buying and selling of shares by almshouse charities is generally considered to be a non-business activity and is therefore outside the scope of VAT.
- 8.11.8 Donations: Donations, bequests or other voluntary contributions are treated as non-business activities. This income is outside the scope of VAT provided the donor receives no benefit in return for the payments.
- 8.11.9 Clerks: Clerks to trustees are officers of the charity and services rendered are usually considered to be of a secretarial and administrative nature. Providing no professional services of a kind normally provided by the office holder in the course of his/her business practice are supplied, they can treat their services as office holders as being outside the scope of VAT. Where these offices are held by an individual or organisation, they may be seen as being in furtherance of a trade, profession or vocation, e.g., a managing agent. If this is the case, the services supplied may be liable to VAT.
- 8.11.10 Community call systems: The costs of installation, repair and maintenance of a community call system can be zero-rated for VAT if designed to be capable of operation by a disabled person. A certificate needs to be provided by the charity to the supplier.
- 8.11.11 Fuel and power: VAT on fuel and power (coal, solid fuels, gas, oil and electricity) may be charged at the lower rate of 5% (2013). Qualifying use is defined as almshouses, residential buildings and other buildings in the almshouse charity being used for domestic (residential) or non-business charitable activities. A certificate will be required by the fuel supplier.
- 8.11.12 Publications and advertising: All forms of charity advertising are zero-rated including advertisements for staff. It is necessary to issue a zero-rating certificate to the supplier, preferably when the advertisement is placed. It can be issued after the expenditure has been incurred up to four years in arrears.
- 8.11.13 Certificates: In many cases a certificate will be required by the supplier where the item or service is to be zero-rated. For major expenditure consultation with HMRC and professional advice is recommended.
- 8.11.14 Retrospective VAT recovery: It may come to the attention of the charity that it has paid VAT incorrectly on previous expenditure. Providing the VAT charged to the charity is not over four years old and the supplier is still in business, it is possible to seek to recover the VAT directly from the supplier. It may be



necessary to provide the supplier with a certificate, with guidance on why the VAT has been incorrectly charged. It is recommended that professional advice is taken.

## **8.12 Council tax**

- 8.12.1 Council tax is a local tax levied on domestic dwellings and it is paid by the individuals who own or rent the home. As residents are licensees they are required to pay council tax and the charity should not pay council tax on the residents' behalf. Those residents who have insufficient income or savings to pay the council tax can seek council tax relief through the local benefits system. Residents who are on a low income or claim benefits could be eligible for a reduction on their council tax bill of up to 100%. Each council runs its own scheme and the amount of reduction depends on a number of factors, including household income and circumstances. Trustees should encourage residents to apply for this benefit if they believe they may qualify.
- 8.12.2 All properties are placed in one of eight bands according to their open market value as at 1st April 1991. Most almshouses are in Band A (lowest), which encompasses dwellings valued at up to £40,000. Banding can be challenged by appealing to the Valuation Office but this must be done within six months of a resident taking up occupation. The Listing Officer has a statutory duty to ensure that the Valuation List is kept up to date. If trustees are concerned about the accuracy of the list, they can bring this to the listing officer's attention.
- 8.12.3 A resident living alone in an almshouse continuously as their main dwelling that is a separate entity for council tax is entitled to a 25% discount. A resident who is disabled may qualify for a reduction under the Disabled Band Reduction Scheme.
- 8.12.4 Trustees must advise the local authority as soon as possible when a vacancy occurs to claim exemption from payment of council tax for up to six months (Class B of the Council Tax (exempt dwellings) Order 1992). Class B is "a dwelling owned by a body established for charitable purposes only which is unoccupied and has been so for a period of less than six months since the last occupation day and was last occupied in furtherance of the objects of the charity".
- 8.12.5 Nursing and residential care homes:
- (a) Where the domestic accommodation is assessed as a single entity, liability for council tax falls to the owner/trustees. When such dwellings are unoccupied, a 50% discount may apply for a certain period. Where the accommodation units within a home are sufficiently self-contained to merit separate assessment, liability for council tax will fall to the resident.
  - (b) Areas of a home that are not used for domestic purposes, such as administrative offices, maintenance workshops or storerooms and any accommodation offering short stay or respite care (where the occupier's main residence is elsewhere) will be subject to business rates. Trustees should take professional advice from a chartered surveyor who specialises in this field before discussing with the local valuation officer.
- 8.12.6 Housing with care:
- (a) Whilst individual flats are separately banded for council tax and most care homes rated centrally, a grey area exists where housing units are more or less self-contained but have care services provided from communal facilities within the scheme. To be fully self-contained they must have their own bathing, toilet and food preparation facilities. Difficulties may arise when self-contained facilities are duplicated by collective dining and bathing facilities.
  - (b) In housing with care, optional care packages are available to residents which distinguishes it from full residential care. It is likely that the communal part of such a scheme might be subject to business rates.
  - (c) Where a non-residential building is used for charitable purposes and uniform business rates would be chargeable, there is an 80% mandatory relief and a 20% discretionary relief. To ensure the correct amount is paid, trustees should consult the local authority in the first instance. If matters cannot be resolved, a specialist Rating Surveyor should then be consulted.
  - (d) Further information on the valuation of a property, including whether it should be considered as domestic or non-domestic property, can be obtained from the local valuation office.

Advice and information on other aspects of the business rates or council tax bills can be obtained from the local authority.

- (e) Trustees should take professional advice or check with the Care Quality Commission (“**CQC**”) or Care Inspectorate Wales (“**CIW**”) to establish whether the care provided falls within their regulatory framework.

#### Further resources:



- Government guidance: [Council Tax](#)
- Government guidance: [Challenge your Council Tax band](#)
- Government guidance: [Apply for Council Tax Reduction](#)
- Government guidance: [How Council Tax works](#)

### 8.13 Mortgaging land

- 8.13.1 If trustees wish to borrow money using land or buildings belonging to the charity as security, there are legal requirements depending on the status of the charity. In addition, the trustees should ensure that there is an appropriate power to borrow in the charity’s Governing Document ([see section 3.5](#)).
- 8.13.2 The charity should aim to follow the statutory procedure set out in Part 7 Charities Act 2011 (in particular section 124) which requires the trustees to obtain advice from a person they reasonably believe to have sufficient ability and experience in financial matters. He/she must have no personal interest in the making of the loan but may be an employee of the charity. Trustees must confirm that:
- (a) the loan is necessary to finance the proposed expenditure
  - (b) the terms of the loan are reasonable
  - (c) the charity can afford the repayment terms
  - (d) If trustees cannot comply with this procedure, they will need the Charity Commission's consent. If the charity already has a loan or a charge on the property, trustees must obtain the consent of that lender.
- 8.13.3 The charity should take professional advice if considering using permanent endowment as security.
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**CHECKLIST – Financial Management**

- ☒ Does the charity have segregated financial functions?
- ☒ Does the charity have an internal financial controls document?
- ☒ Does the charity have a policy on trustee expenses?
- ☒ Is the charity recognised by HMRC as a charity for tax purposes?
- ☒ Has HMRC been informed of any changes to the charity's authorised officials and/or responsible persons?
- ☒ Does the charity maintain appropriate accounting records and provide these to the trustees on a regular basis?
- ☒ Does the charity have more than 6 years of financial records?
- ☒ Does the charity have a formal payroll system or procedures in place to manage payment of PAYE and National Insurance?
- ☒ Do all bank withdrawals require dual authorisation?
- ☒ Does the charity produce an annual budget?
- ☒ Has the charity produced up to date annual accounts?
- ☒ Does the charity maintain a balance of more than £85,000 with any one bank?
- ☒ Are all bank accounts in the correct name of the charity and has the mandate been updated with any recent changes of trustees?
- ☒ Does the charity have a power of investment and do the trustees manage the charity's investments in line with this power?
- ☒ Does the charity employ a professional investment manager and, if so, is there a formal written agreement in place?
- ☒ Does the charity have an investment policy? Are all of the charities investments in line with the policy?
- ☒ Does the charity have a reserves policy? Does the charity maintain reserves in line with the policy?
- ☒ Does the charity have any investment permanent endowment?
- ☒ Does the charity have an Extraordinary Repair Fund?
- ☒ Does the charity have a Cyclical Maintenance Fund?
- ☒ Does the charity have appropriate buildings insurance?
- ☒ Does the charity have appropriate employer's liability insurance?
- ☒ Does the charity have appropriate insurance for any motor vehicles?
- ☒ Does the charity have trustee indemnity insurance?
- ☒ Does the charity have a disaster contingency plan?
- ☒ Does the charity carry out any trading in excess of the small-scale trading exemption?
- ☒ Has the charity claimed an exemption from payment of council tax on any vacant almshouses?



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**References:**

- 120 Section 122 of the Housing and Regeneration Act 2008.
- 121 Section 130(1), of the Charities Act 2011 and, for charities that are companies, section 386(2) Companies Act 2006.
- 122 Section 130(2), Charities Act 2011 and, for charities that are companies, section 386(3) Companies Act 2006.
- 123 Section 18(1), Part III of Schedule 1 of the Housing Act 1996.
- 124 Section 131 of the Charities Act 2011. For charities that are companies, the Companies Act 2006 specifies a shorter period of 3 years in section 388 but records should be kept for 6 years from the end of financial year to comply with HMRC's requirements.
- 125 Section 17(5) of the Charities Act 2011.
- 126 Section 3 of the Trustee Act 2000.
- 127 Section 7(2) of the Trustee Act 2000.
- 128 Section 8 of the Trustee Act 2000.
- 129 Section 4 of the Trustee Act 2000.
- 130 Section 5 of the Trustee Act 2000.
- 131 Section 558 of the Income Tax Act 2007 or section 511 of the Corporation Tax Act 2010.
- 132 **Harries (Bishop of Oxford) v. Church Commissioners for England [1992] 1 WLR 1241 and Sarah Butler-Sloss and others v. the Charity Commission for England and Wales and another [2022] EWHC 974 (Ch).**
- 133 Section 11 of the Trustee Act 2000.
- 134 Section 15 of the Trustee Act 2000.
- 135 Section 14 of the Trustee Act 2000.
- 136 Section 15 of the Trustee Act 2000.
- 137 Sections 104A and 104B of the Charities Act 2011 and the Charities (Total Return) Regulations 2013 (as amended).
- 138 Section 19 of the Trustee Act 1925 in relation to unincorporated charities, and usually in the case of a corporate charity under its general powers.
- 139 Regulation 3 of The Employers' Liability (Compulsory Insurance) Regulations 1998.
- 140 Section 189 of the Charities Act 2011.
- 141 Section 1 of the Charities Act 2011.
- 142 Paragraph 1 of Schedule 6 of the Finance Act 2010.
- 143 [Guidance on the fit and proper persons test.](#)
- 144 [Annex iii: approved charitable investments and loans.](#)
- 145 [Annex iv: trading and business activities – basic principles.](#)





## 9 WEEKLY MAINTENANCE CONTRIBUTION

### 9.1 Introduction

- 9.1.1 One of the principal responsibilities for trustees is to ensure that the charity has sufficient income to ensure the financial viability of the charity.
- 9.1.2 It is standard practice for the charity to charge residents a Weekly Maintenance Contribution (“WMC”) towards the cost of maintaining the almshouses.
- 9.1.3 For the avoidance of doubt, the charity can only charge WMC if there is an express power in the Governing Document that permits the trustees to make such a charge. Whilst it is rare for a charity not to have an express power, if there is no such power, the charity would need to amend its Governing Document ([see section 3.6.3](#)) to include such a power.

**WMC is not rent, it is a contribution paid by residents in support of the maintenance of the almshouses.**

### 9.2 Calculating WMC

- 9.2.1 The starting point should be a budget for the charity, which:
- (a) factors in all outgoings, including contributions to the CMF and ERF, routine maintenance costs, loan repayments, office and staff costs, and other communal charges (e.g., gardener, lighting in communal areas, upkeep of call alarm system, lift maintenance etc.) ([see section 8.8](#));
  - (b) considers all of the charity’s different sources of income (both from endowments and from investments).
- 9.2.2 The charity should charge an economic and realistic WMC to the residents, irrespective of whether the charity is able to rely solely upon its income from endowments and/or investments. Any perceived surplus of income could be allocated to the ERF for the construction of new dwellings to assist in the charity’s growth or to reserve funds for major repairs.
- 9.2.3 The budget may also include a deduction for voids. This should be realistic, as it can take longer than estimated to prepare an empty almshouse for re-occupation and to select and appoint a new resident. For charities with less than 10 dwellings, this can have a major impact on cash flow.
- 9.2.4 The charity may wish to take the following into consideration:
- (a) the equivalent fair rent ([see section 9.3.2](#)), it is acceptable to increase this in line with inflation for up to three years but every three years thereafter, an up-to-date professional assessment should be sought from the Valuation Office Agency using their standard form of application available online;
  - (b) the likely level of inflation, as this will have a direct effect on the cost of utility services (water, gas, electricity, heating oil, telephone);
  - (c) increases in pensions and benefits scheduled for the beginning of the fiscal year;
  - (d) index-linked increases in insurance premiums (a fire insurance revaluation will mean higher premiums), inflationary increases in accounting and audit services, membership subscriptions, salaries and wages, contractors’ services including gardening, window cleaning and call system;
  - (e) for charities that are registered with Homes England, the terms of the Rent Standard Guidance ([see section 9.6 below](#));
  - (f) estimated or known increases in expenditure (even if for a short term);
  - (g) a service charge element to cover the actual cost of providing services to the residents (and any future replacement cost);
  - (h) residents’ eligibility for Housing Benefit and other government payments.



- 9.2.5 If the WMC includes a service charge, then this may be covered by Housing Benefit if the resident has to pay the charge as a condition of their terms of occupation. If, however, the services are optional then the resident will not be able to claim the costs of these optional services when claiming Housing Benefit.
- 9.2.6 The WMC should incorporate an amount to cover the cost of providing central heating, lighting or hot water in communal areas. This element can be included under service charges and paid by Housing Benefit.
- 9.2.7 In cases where there is a communal boiler and/or the charity pays the utility bills, charges need to be divided equally amongst residents. This element of WMC cannot be claimed through Housing Benefit.

### 9.3 Establishing Levels of WMC

- 9.3.1 Setting the level of WMC is a matter for the discretion of the trustees, but the trustees should ensure that:
- (a) the amount claimed does not cause hardship or distress to any resident; and
  - (b) the amount claimed is no more than is necessary (when combined with other sources of income available to the charity) to keep the almshouses in an appropriate state of repair.
- 9.3.2 As residents do not occupy the almshouses under tenancies, it is not possible to determine a “Fair Rent” under The Rent Act 1977. However, it is possible to arrange for informal non-statutory advice to be provided by a Rent Officer from the Valuation Office Agency about what would be the maximum fair rent that a landlord could charge if the almshouse was eligible for rent registration (this is referred to as “Equivalent Fair Rent” (“EFR”). Determination of an EFR will provide an indication of the level of rent, exclusive of service charges, for similar accommodation in the local area. It is recommended that, the WMC is set at or just below an amount equal to the EFR plus the service charge in order to protect the long-term interests of the charity. When carrying out the valuation the Rent Officer should be advised that the charity is responsible for all internal and external redecorations and all repairs and maintenance in respect of the almshouse.
- 9.3.3 Where it is necessary to charge in excess of the EFR recommended figure (plus the service charge), the local authority should be asked to confirm the maximum sum eligible for payment by Housing Benefit or Local Housing Allowance to qualified applicants.
- 9.3.4 Charities registered with Homes England are required to adhere to the regulatory framework and the WMC must be set in compliance with the Rent Standard – April 2020 which refers to the “Policy statement on rents for social housing” (see section 9.6).
- 9.3.5 Where a one-bedroom almshouse is occupied by a couple, as opposed to a single person, there may be greater wear and tear and higher consumption of water, gas and electricity. Trustees may wish to consider a wear and tear factor of 1.5 times that caused by a single occupant. However, as far as possible, it is advisable for charities to seek to maintain consistent levels of WMC for all residents.
- 9.3.6 Trustees are allowed to rebate some WMC to a resident suffering hardship if the charity’s objects (i.e., purposes) include the relief of need by reason of financial hardship (see section 3.5.5). This would normally only be for a limited period.
- 9.3.7 The Charity Commission has agreed that the cost of water and sewerage charges may be met from endowment income, if any, in order to certify to the local authority that no part of the WMC is in respect of these charges. However, if the charity does not have sufficient funds or the endowment income is limited, the water and sewerage charge can be re-charged to residents in addition to WMC as this is a legitimate housing cost.
- 9.3.8 The charity’s Governing Document may state that any change in the level of WMC has to be approved by the Charity Commission. However, the requirement to obtain the Charity Commission’s approval was removed from all Governing Documents in September 1992 by statute<sup>146</sup>.
- 9.3.9 The charity should consider what benefits the residents may be entitled to and consider the level of housing benefit (Local Housing Allowance) that residents may be entitled to when calculating the appropriate level of WMC. If the resident’s housing benefit is calculated under the Local Housing Allowance rules, the local authority will not deduct any service charges (even if they are considered to



be ineligible) and this is because the rent officer will have already taken services charges into account when arriving at the relevant figure for the allowance. If the WMC charged is lower than the permitted Local Housing Allowance, then the resident will only be entitled to claim the lower figure.

**Summary of charges that may be claimed as part of housing benefit  
(provided they are a condition of occupancy)**

- Caretaking.
- Provision of lifts and lift maintenance.
- Door entry maintenance.
- Use of a garden in certain cases and gardening of communal areas.
- Cleaning of communal areas, including widows and removing dumped rubbish.
- Cleaning of exterior windows if the resident is not able to do this themselves because of age or disability.
- Furniture or household equipment if the resident does not have an agreement with the trustees that it will become their property.
- Lighting in communal areas.
- Provision of communal telephones.
- Radio relay charges and charges for bringing, installing and maintaining equipment for relaying a television broadcast signal to a client's home (TV and digital aerials). This covers the relay of ordinary domestic free-to-view channels on communal television systems. It does not cover the cost of set-top boxes, television rental, licence fees or subscriptions to television channels that are not available on a free to view basis.
- CCTV.
- Fire equipment protection, including repairing and testing emergency lighting and smoke alarms.
- Upkeep of a warden call system.
- Management fees.
- Cost of utilities supplied to communal areas.
- Provision of premises and equipment to do laundry (but not charges for personal laundry).
- Use of a garage.
- Provision of any other service related to the adequacy of the accommodation as a dwelling, which must be paid for by the resident as a condition of their Letter of Appointment relating to the accommodation.

**Summary of charges that may not be claimed as part of housing benefit<sup>147</sup>**

- Charges in respect of day to day living expenses (including the provision of meals and laundry).
- Leisure items such as sports facilities, television rental, licence and subscription fees.
- Cleaning of rooms and windows (other than communal rooms or the exterior of windows where the resident cannot clean them themselves).
- Transport.
- Charges relating to the acquisition of furniture or household equipment.
- Charges for a personal emergency alarm system.
- Charges in respect of medical expenses.
- Charges for nursing care or personal care.
- Charges in respect of general counselling.
- A service charge in respect of fuel.

**Further Resources:**

- Valuation Office Agency: [Guidance on informal advice – equivalent fair rents](#)
- Government guidance: [Rent Standard and Guidance](#)
- Government guidance: [Housing Benefit](#)
- Government guidance: [Policy statement on rents for social housing](#)

**9.4 Collection of WMC**

- 9.4.1 Although “Weekly Maintenance Contribution” is the term widely known and commonly used by almshouse charities, it is recommended that charities collect WMC monthly (i.e., by calculating the annual amount over 52 weeks and dividing by 12 months) or four-weekly by standing order.
- 9.4.2 The amount due and date of when payment is received must be recorded.
- 9.4.3 Residents in receipt of Housing Benefit can, but do not have to, have this paid directly to the charity although this is something the charity would wish to encourage where possible. If the resident is in receipt of Universal Credit the benefits will be paid directly to the resident, and the resident will have to pay the appropriate amount on to the charity.
- 9.4.4 Payment in cash should be strongly discouraged. If payment in cash is accepted, it could result in false accusation, misunderstanding or dishonesty. If there is no option but to accept cash payments, proper internal financial controls should be in place (see section 8.2) and receipt of the cash should be properly recorded. The charity should also check that the charity’s insurance will provide cover for cash held by the charity.

**At no time should the word "rent" be used or a pre-printed "rent book" be utilised to record WMC payments.**



## 9.5 Reviewing WMC

- 9.5.1 Trustees should review the amount of WMC annually (or even six-monthly in extreme financial circumstances) to:
- (a) ensure the ongoing viability of the charity for current and future residents (i.e., over the next 25 – 50 years), as part of the annual budget setting process; and
  - (b) ensure that the individual circumstances of residents are considered to avoid any undue hardship.
- 9.5.2 If WMCs are low and set at a level that is not financially sustainable for the charity, the trustees should resolve to increase these in gradual steps over an appropriate period of time. The trustees should take care in how increases of WMC are communicated to residents, so that they understand the rationale for any substantive increases. It is recommended that trustees arrange to meet residents to explain the reasons for increases. Residents should understand how WMCs are calculated and be consulted as far as practicable and notified of any changes as early as possible. Details of the increases should be set out in writing, giving plenty of notice. Residents should be given the opportunity to speak to trustees or staff on an individual basis to express any concerns and should be advised that they are welcome to be accompanied by a relative or friend should they so wish.
- 9.5.3 Maintaining adequate reserves (see section 8.7) should reduce the need to have large fluctuations in WMC to provide for unplanned repairs.
- 9.5.4 Trustees should advise residents (and, if appropriate, next of kin) of the increased level of WMC with the date of commencement. Where Housing Benefit (Local Housing Allowance) is paid, residents (with assistance from the charity if necessary) should apply to the local authority for an increase in benefit. Housing Benefit is only paid for the "housing" element of the WMC. "Support" may be claimed under the Supporting People programme in some areas.
- 9.5.5 Charities which are Registered Providers of Social Housing (see section 13) are also subject to the government's rent restructuring framework (see section 9.6).

## 9.6 Rent Restructuring for Homes England Registered Providers of Social Housing

- 9.6.1 Charities that are Registered Providers of Social Housing are required, when setting their WMC and considering any increases to WMC, to comply with the "Policy statement on rents for social housing" issued by the Ministry of Housing, Communities & Local Government (the "Rent Policy").
- 9.6.2 WMC is not "rent" but, for the purposes of the Rent Policy (but no other purpose) is consistent to rent, and therefore the level of WMC charged has to be consistent with the provisions under the Rent Policy for setting rent.
- 9.6.3 The Rent Policy is aimed at restricting rents with the aim of bringing consistency to levels of rent across the social housing sector.
- 9.6.4 Registered providers of Social Housing must set the initial WMC on all almshouses at a level that is no higher than the "formula rent" provided for in the Rent Policy, subject to the "rent flexibility level".
- 9.6.5 The Rent Policy sets out that the weekly "formula rent" is equal to:



<p><b>70% of the national average rent</b></p> <p>(which means the national average rent in England in April 2000)</p> <p><i>multiplied by</i></p> <p><b>relative county earnings</b></p> <p>(which means the average manual earnings for the county in which the almshouse is located, divided by national average manual earnings, both at 1999 levels)</p> <p><i>multiplied by</i></p> <p><b>the bedroom weight</b></p> <p>(which means a figure based upon the number of bedrooms in the almshouse)</p> <p><i>plus</i></p> <p><b>30% of the national average rent</b></p> <p>(which means the national average rent in England in April 2000)</p> <p><i>multiplied by</i></p> <p><b>relative property value</b></p> <p>(which means the individual property value, divided by the national average property value in England as at January 1999)</p>
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- 9.6.6 The amounts to use for the national average rent, the national average manual earnings and the national average property value along with the bedroom weights are set out in Appendix A to the Policy, which also includes worked examples.
- 9.6.7 The property value used in the calculation must be based on an existing use value of the almshouse assuming vacant possession and continual residential use. (This is not the same value as “existing use value – social housing”.) In some cases, it is permitted to use a depreciated replacement cost method of valuation. Valuations must be carried out in accordance with a method recognised by the Royal Institution of Chartered Surveyors. The valuation should be as at January 1999. If major works are carried out to the almshouses it may be appropriate to carry out a revaluation exercise.
- 9.6.8 The “formula rent” must not exceed the rent caps set out in the Policy.
- 9.6.9 It is also important to note that, when referring to “formula rent”, the levels relate to “rent” only and do not include any service charges. Any such charges, for example, shared boiler costs, should not form part of the calculation. Formula rents can be above or below the level of WMC currently paid.
- 9.6.10 It is accepted that in some cases, due to local factors and concerns, the Registered Provider of Social Housing should have some discretion over the amount of rent and it is possible to set the WMC at 5% above the formula rent figure, but the charity needs to ensure that there is a clear rationale for doing this.
- 9.6.11 The WMC can only be increased each year by an amount equal to the CPI (at September of the previous year) plus 1 percentage point.
- (a) The increase is linked to the current WMC being charged, not the formula rent that could have been charged if that would have been higher.
  - (b) The charity does not need to implement an increase and can apply a lower increase, freeze the WMC, or even reduce the WMC. (Again, in future years, any increase can only be in accordance with the limit and cannot seek to include increases for future years where there was no increase in WMC.)
  - (c) The charity should always consider what levels of Housing Benefit or Universal Credit may be available to the resident before changing the WMC.



- 9.6.12 Whilst the WMC does not include service charges, Registered Providers of Social Housing are expected to set reasonable and transparent service charges. Where possible the charity should limit increases in service charges using the same formula as for increases in the WMC.

**Further Resources:**

- Government guidance: [Policy statement on rents for social housing](#)

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**CHECKLIST – WEEKLY MAINTENANCE CONTRIBUTIONS**

- ☒ Does the charity have the power to charge a WMC?
- ☒ Is the charity charging all residents an economic and realistic WMC?
- ☒ Does the charity's budget consider potential voids?
- ☒ Is the WMC set considering the equivalent fair rent?
- ☒ Does the charity accept payment of the WMC in cash?
- ☒ Is the level of WMC reviewed annually?

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**References:**

- <sup>146</sup> Section 50 of the Charities Act 1992.  
<sup>147</sup> Schedule 1 of The Housing Benefit Regulations 2006



## 10 RESIDENTS

### 10.1 Introduction

- 10.1.1 The occupants of almshouses are usually referred to as “residents” but may also be referred to by other titles (e.g., “Brothers” etc.). The term “resident” is used throughout this publication.
- 10.1.2 The term “almshouse” is used throughout this publication to refer to a resident’s individual dwelling and the term “almshouses” is used to refer to the group of dwellings occupied by the residents.
- 10.1.3 If a charity has employees some activities relating to residents may be delegated by the trustees. Where references are made to activities being carried out by the “charity” this indicates that the activity can be carried out by the trustees and/or by the charity’s employees.

### 10.2 Status of Residents

**Residents occupy an almshouse as beneficiaries of the trusts of the charity, they are not tenants.**

- 10.2.1 A resident must qualify as a beneficiary within the terms of the trusts on which the almshouse is held in order to be able to occupy the property ([see section 10.3](#)).
- 10.2.2 It is established law<sup>148</sup> that:
- (a) a resident, as a beneficiary of the charity, enjoys the privilege of occupation in the almshouse;
  - (b) there is (in the absence of any express power in the charity’s constitution) no power to grant a tenancy of functional permanent endowment (i.e., the almshouses) ([see section 2.3](#));
  - (c) the residents occupy the premises under licence (usually evidenced by a Letter of Appointment ([see section 10.15](#)) as a beneficiary of the charity; the licence is not a contractual arrangement, but an appointment further to the terms of the trusts;
  - (d) the relationship with the resident is that of trustee and beneficiary, not landlord and tenant;
  - (e) the occupation of an almshouse on this basis does not create any form of secure tenancy, the resident is not a tenant; and
  - (f) trustees have a fiduciary duty to permit appropriately qualified individuals to occupy the almshouses.
- 10.2.3 If the charity has other property which is not held as functional permanent endowment ([see section 2.3](#)), then if that property is used to provide accommodation to residents (as opposed to being held for investment purposes) then residents can be granted secure tenancies of such property or, alternatively, can be permitted to occupy as a beneficiary under licence.

### 10.3 Eligibility to be a Resident

- 10.3.1 The Governing Document ([see section 3.5](#)) will set out the trusts on which the almshouses are held and will specify the beneficiary group from which residents may be appointed. The trustees have a fiduciary duty to ensure that all residents, when appointed, qualify as beneficiaries.
- 10.3.2 As explained in [section 3.5.3](#):



If a previously unincorporated charity has restructured as a CIO or a company limited by guarantee, then the almshouses which were held by the unincorporated charity as functional permanent endowment (see section 2.3) will be held by the CIO or company limited by guarantee as trustee (not as part of the assets of the corporate body) and will continue to be held on the trusts as set out in the Governing Document of the unincorporated charity. When considering whether individuals qualify to become residents, it is important to review the Governing Document of the underlying trusts of the functional permanent endowment not the Governing Document of the CIO or the company limited by guarantee.

- 10.3.3 The terms of the trusts will differ between charities and trustees need to know the appropriate criteria that apply to their charity.
- 10.3.4 Examples of criteria (but this is a not an exhaustive list) include:
- (a) requiring the individual to be over a certain age, or to be elderly;
  - (b) requiring the individual to be of a particular sex;
  - (c) requiring the individual to reside, or have resided, or have some connection with a particular geographical area;
  - (d) requiring the individual to be of a particular faith.
- 10.3.5 In most cases (but not all) it will be a requirement that the resident is in financial hardship. As a general guideline it would normally be considered that an individual was in financial hardship if they were unable to afford to buy or rent an equivalent size dwelling in the local area to the type of accommodation provided by the charity. If the requirement does not expressly include financial hardship (for example maybe the requirement is to provide accommodation for the relief of need by reason of age) then the trustees still have a duty to ensure that the accommodation is provided to those with the greatest need.

**The Charity Commission's operational guidance states that: "Even where it is open to trustees to appoint any persons who have need of facilities by reason of age, infirmity or disablement, if the applicant's resources are substantial and there are other types of accommodation in the locality (which they can afford and which will meet their needs), they should not generally be offered an almshouse place".**

- 10.3.6 The trustees have a statutory duty to ensure that the charity delivers its' services without discrimination on the grounds of a protected characteristic<sup>149</sup> (e.g., age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation). In some cases, the criteria in the Governing Document may only permit individuals who share a protected characteristic to benefit. Such criteria are permitted by virtue of the charities' exemption in the legislation<sup>150</sup> provided that the restriction can be justified. The only exception is that the trustees cannot limit the beneficiaries by reference to skin colour, and therefore any criteria of this nature should no longer be applied. A restriction to benefit individuals of a particular race would still be valid. If the trustees are concerned that the criteria cannot continue to be justified, then they should amend the Governing Document (see section 3.6.3).
- 10.3.7 Some charities may offer accommodation to couples if this is permitted by the Governing Document. In such cases it is a requirement that both individuals qualify as beneficiaries of the charity and each party is named on the Letter of Appointment (see section 10.15).

#### Further resources:



- The Almshouse Association website: see **Model Equality and Diversity Policy** in [Model Policies and Templates](#)



## 10.4 Duty to appoint residents

**Trustees have a duty to appoint the residents.**

- 10.4.1 The trustees' duty to appoint residents cannot be delegated to an employee or a managing agent or a third party and must be carried out by the trustees. The trustees can delegate the task of identifying suitable individuals to be recommended for appointment.
- 10.4.2 The Governing Document may stipulate the process to be followed to identify beneficiaries (e.g., advertisement in a particular way, or the involvement of a third party with nomination rights etc.).

## 10.5 Advertising vacancies

- 10.5.1 The Governing Document will usually require that vacancies are advertised. (As mentioned in section 10.3.2, the provisions relating to advertisements will be found in the trusts of the functional permanent endowment not the Governing Document of a CIO or company limited by guarantee.) If the beneficiaries are required to be from a particular geographical area then the Governing Document will normally require that the advertisement is made within the appropriate area of benefit. Older Governing Documents may include a form of notice to be used for the advertisement, but this is usually annexed to the Governing Document by way of example as opposed to forming part of the Governing Document and trustees can use a different form of wording if they consider it appropriate.
- 10.5.2 The advertisement should:
- (a) make clear any criteria that applicants need to satisfy in order to be a potential beneficiary;
  - (b) receive the widest possible publication so that it is seen by the greatest number of potential beneficiaries;
  - (c) be placed on social media, in local newspapers, parish magazines, on public notice boards, in libraries and on on-line bulletin boards, local GP surgeries and in all other places likely to be frequented by potential beneficiaries;
  - (d) should demonstrate to potential applicants the benefits of living in an almshouse and set out the services and/or facilities on offer; and
  - (e) be worded in a non-discriminatory manner save to the extent that the criteria require reference to protected characteristics (see section 10.3.5 above).
- 10.5.3 In addition to placing advertisements, the trustees may wish to consult with local organisations, charities or statutory authorities that provide services for individuals who are likely to qualify as beneficiaries.
- 10.5.4 In most cases space in an advertisement is likely to be limited. The charity should make use of its website as a means of providing further information for applicants. A website can be invaluable for marketing the almshouse and should at least include:
- (a) the history of the almshouse;
  - (b) the details of the accommodation on offer;
  - (c) the criteria that need to be met by applicants;
  - (d) the details of services and facilities that are provided to residents;
  - (e) clear details of how to apply for vacancies, which may include an application form (which can be completed or accessed on-line but which should also be made available in a format that is accessible to all);
  - (f) details of the closing date for applications; and
  - (g) contact details to obtain more information or address any queries.
- 10.5.5 As the charity will not know when vacancies are likely to arise it is acceptable to maintain a record of expressions of interest from individuals who enquire about accommodation. Such a record should not be treated as a waiting list and whenever a vacancy arises appropriate steps should be taken to advertise



the vacancy (which may include contacting those individuals who have shown a previous interest) to ensure that the vacancy is appointed to the person most in need at the time.

#### Further resources:



- The Association's website has a section for [advertising resident vacancies](#), which is free and allows links to individual charities.
- [HousingCare.org](#) provided by the Elderly Accommodation Counsel is also a good resource with a directory of all types of sheltered and retirement housing, and care homes in the UK.

## 10.6 Nomination agreements

- 10.6.1 The charity may have entered into a nomination agreement with the local authority (or a third party) as a condition of obtaining funding to build or renovate the almshouses and the procedure set out in any such agreement should be followed when a vacancy arises.
- 10.6.2 A right of nomination is not the same as a right to appoint residents; the trustees will always be responsible for deciding who to appoint as residents. In particular:
- (a) Nominees must meet the criteria to be a beneficiary as set out in the Governing Document. If a nominee does not meet the criteria the trustees must refuse to appoint the individual as a resident.
  - (b) Trustees should carry out appropriate due diligence ([see section 10.7](#)) on nominees and if, after investigation, they are considered to be unsuitable for appointment, the trustees should decline to make the appointment even if the nominee meets the criteria.
- 10.6.3 A charity considering entering into a nomination agreement should take legal advice to ensure that the agreement complies with charity law. Such an agreement should:
- (a) set out the criteria that nominees need to meet;
  - (b) describe the procedure for the charity to notify the local authority of vacancies;
  - (c) specify an agreed deadline (typically 2 – 3 weeks) by the end of which the local authority must make a nomination and make it clear that after the deadline the charity may make alternative arrangements to fill the vacancy;
  - (d) make it clear that, while trustees are required to consider the local authority's nominations, they are under no obligation to appoint those nominees as residents and it is for trustees to be guided by their own selection criteria and their view of the person in the greatest need of the charity's assistance at the time of appointment;
  - (e) state that while trustees will provide a simple explanation for not selecting a local authority nominee, they are prevented from discussing the relative merits of other nominations under data protection legislation.

## 10.7 Due Diligence

- 10.7.1 Before making any appointment, the trustees should carry out appropriate due diligence on the applicants.
- 10.7.2 Due diligence should at the very least include:
- (a) application forms;
  - (b) home visits;
  - (c) financial assessments; and
  - (d) interviews.

## 10.8 Application forms

- 10.8.1 As a first stage applicants should be asked to complete an application form with sufficient information to enable the trustees to confirm that the applicant qualifies as a potential beneficiary.
- 10.8.2 Care should be taken not to request information that would be classed as personal data or sensitive personal data (see section 15) unless that information is reasonably needed for the purposes of assessing either the application or that the individual meets the necessary criteria to be a resident. Much of the information obtained through the application form is likely to be personal data that is subject to data protection legislation. In processing this information, the trustees must comply with the relevant legislation (see section 15). Whilst it is appropriate to retain information relating to applicants who are successful, for so long as they remain residents, information relating to applicants who are not successful should be destroyed within a reasonable period of the applicant being informed of the decision.
- 10.8.3 In most cases it will be appropriate to request information about the individual's current housing and financial circumstances. Applicants must be prepared to substantiate their financial circumstances so trustees can assess their need (even where financial need is not a criterion to be a beneficiary, see section 10.3.5). The individual should be asked to confirm on the application form that the information provided is full, honest and accurate. It should be made clear that the individual has a duty to inform trustees of any change in their circumstances and that providing false information may place the individual's appointment in jeopardy in the future.
- 10.8.4 The trustees need to consider carefully whether it is appropriate or necessary to ask individuals about unspent criminal convictions or whether they are a registered sex offender. In most cases it will not be appropriate, but the trustees need to consider their duties towards other residents to ensure that individuals are not a risk to the resident community. If the Governing Document requires residents to be of "good character" then it may be appropriate to ask such information, but before doing so legal advice should be sought.
- 10.8.5 Trustees have a responsibility to check the immigration status of all applicants to ensure that they have the right to enter or remain in the United Kingdom and are not prevented from occupying premises<sup>151</sup>.
- 10.8.6 The trustees should review the application forms and create a list of those applicants who should proceed to the next stage.

### Further resources:



- The Almshouse Association website: see **Model Residents Application Form** in [Model Policies and Templates](#)

## 10.9 Visit to applicant's home

- 10.9.1 In order that the trustees can confirm that the individual would be a suitable resident it is appropriate to consider carrying out a home visit. Such visits should never be carried out by a lone individual but always by two representatives of the charity.
- 10.9.2 The purpose of the visit is not to interview the individual, but to check:
- that the applicant would be able to live independently in the almshouse if appointed and that the accommodation on offer would be suitable for their needs (see section 10.12 below);
  - that the individual's current living conditions are consistent with the information provided in the application form; and
  - that the individual, if appointed, would be a good fit with the community of residents living in the almshouses.
- 10.9.3 If the individual is frail or vulnerable, it is best practice to ensure that the applicant's next of kin or another appropriate person is present during the visit. The trustees should consider at an early stage



whether such an individual is likely to be able to live independently and, if not, then the application should not be pursued.

- 10.9.4 The individuals who carry out the visit should prepare a short, factual, report to the trustees confirming whether or not the individual would be suitable to be considered as an applicant. Care should be taken to ensure that the report does not contain any discriminatory or defamatory content.

**Further resources:**



- The Almshouse Association website: see **Model Interview Applicant Notes** in [Model Policies and Templates](#)

## **10.10 Financial Assessment**

- 10.10.1 If the criteria for beneficiaries require an individual to be in financial need, it is necessary to carry out a proper financial assessment and to request sufficient information from the applicant for this purpose. In all other cases, it would still be recommended, so that the trustees can be certain that the accommodation is being allocated to those in the greatest need.
- 10.10.2 It is important to consider all aspects of an individual's finances. Whilst an individual may not have the means to maintain themselves from their income, it may be the case that if they own their property and were to sell it, they would not be considered to be in financial need.
- 10.10.3 Whilst trustees may consider applications from individuals who own their own homes, or who have the proceeds of sale of their own homes, they should only do so where:
- (a) there are no other suitable candidates who are in greater financial need after appropriate advertising has been carried out on a wide basis; and
  - (b) the proceeds of sale, after costs, if invested to provide an income would produce substantially less than the national average income, after all other sources of income (e.g. pensions and benefits) are considered.

**In circumstances where financial need is not one of the relevant criteria and an applicant's resources are substantial and sufficient to enable them to obtain local accommodation, trustees should always look to appoint other individuals who may be in greater financial need, so a financial assessment should be carried out (see section 10.3.5).**

**Further resources:**



- Office for National Statistics – [Earnings and working hours data](#)

## **10.11 Independent Living**

- 10.11.1 Whilst almshouse accommodation is always provided to those suffering from some form of need, which may include illness or old age, traditionally such accommodation has always been provided to individuals who are capable of independent living.
- 10.11.2 The provision of residential accommodation with meals, nursing and other personal services for those who are not able to live independently is likely to go beyond the scope of the charity's objects unless specific provision has been made in the objects for the provision of extra-care services or facilities. (In addition, such services may be regulated activities that require the charity to be registered with CQC or CIW.)
- 10.11.3 Unless the charity's objects extend to include extra-care services (see section 14), the trustees should ensure that individuals who are considered for appointment as residents are able to live independently.



- 10.11.4 In some cases, due to increased frailty of an existing resident, where practical the charity may permit services to be provided which seek to enable residents to continue to live independently in their own homes (e.g., support packages that can be purchased), these are likely to fall within the scope of the charity's objects. If adaptations need to be made to the almshouse, then the resident will need to get prior permission from the trustees before making any changes and the trustees will need to consider whether the changes are temporary or will require permanent changes to be made to the almshouse (which may not be appropriate).
- 10.11.5 The ability for a person to live independently may differ depending upon the nature of the accommodation that is provided (e.g., the difference between living in a first floor flat and a ground floor flat).
- 10.11.6 The charity should have a clear policy setting out what the trustees consider to be independent living and the process that the charity will follow if the trustees determine that the individual is no longer able to live independently (i.e., the resident is considered to be either a danger to themselves and/or other residents). The trustees should explain to all residents, when they are appointed, what the threshold is for determining what the charity considers appropriate in terms of independent living and the consequences of a resident not meeting that threshold in the future.
- 10.11.7 It may be appropriate, if there are concerns over the individual's ability to live independently, to seek a report from the applicant's GP or to discuss the matter with the individual's family. The charity must seek the applicant's written consent before contacting the GP or individual's family. Care should be taken when consulting family or a GP as they may have a misguided but well-intentioned wish to see the applicant placed in an almshouse, when in fact alternative care facilities might be a better option.

**Further resources:**

- The Almshouse Association website: see **Independent Living guidance** in [Model Policies and Templates](#)
- The Almshouse Association website: see **Cover Letter to GP** in [Model Policies and Templates](#)
- The Almshouse Association website: see **GP Authorisation Form** in [Model Policies and Templates](#)

**10.12 Interview of applicants**

- 10.12.1 Once the due diligence steps have been completed, the trustees should prepare a shortlist of suitable applicants to be invited for interview.
- 10.12.2 It is recommended that the interview panel should include some of the trustees, but that the panel is not too large so as to appear overwhelming to the applicant.
- 10.12.3 The interview panel's purpose is to make recommendations to the trustees so that the trustees as a whole can make the formal appointment. The trustees need to be provided with sufficient information about outcome of the interview process to enable them to make an appropriate decision (which may override the views of the interview panel).
- 10.12.4 As part of the interview process the applicants should be shown the accommodation and given the opportunity to meet with the charity's staff, if any, and some of the residents.
- 10.12.5 If the applicant is frail or vulnerable but is still considered to be able to live independently, so is being considered as a resident, it is advisable if possible to invite the individual's next of kin or another appropriate person to attend the interview.
- 10.12.6 As well as using the interview to assess whether the applicant would be an appropriate individual to appoint as a resident and to raise questions based on the information provided to date, it is recommended that the following issues should be discussed during the interview:
- (a) the legal status of residents;
  - (b) the meaning of independent living;
  - (c) the arrangements for collection of WMC ([see section 9](#));



- (d) the role and function of trustees and staff;
- (e) the complaints policy and procedure;
- (f) arrangements for alterations, repairs, building maintenance and decoration of the almshouse;
- (g) policies on fire precautions, health and safety, pets, and smoking;
- (h) arrangements for cleaning common areas, window cleaning, garden maintenance and waste disposal;
- (i) trustees' expectation as to the condition in which the dwelling should be maintained (i.e. clean and in a good state of repair);
- (j) arrangements for communal facilities and master keys;
- (k) trustees' policy on visitors staying overnight or for longer periods;
- (l) circumstances in which a resident can be asked to leave an almshouse, for example, change in their status;
- (m) the advisability of individuals making a will and/or a lasting power of attorney; and
- (n) the advisability of providing the trustees with contact details for and permission for trustees and/or staff to speak to the individual's next of kin, GP and/or hospital as appropriate.

**Further resources:**

- The Almshouse Association website: see **Model Interviewing Applicant notes** in [Model Policies and Templates](#)

**10.13 Appointment of Residents**

- 10.13.1 At the conclusion of the interview process the trustees must decide who to appoint as a resident to fill the vacancy. This is a decision of the trustees and must be made:
- (a) collectively by the trustees;
  - (b) impartially based on the facts;
  - (c) free of any conflict of interest (and any trustee connected to an applicant by a family relationship or friendship should declare the fact and withdraw from the appointment process); and
  - (d) in accordance with the requirements of the Governing Document (which may, for example, require the appointment to be made at a "Special Meeting" held in a particular manner).
- 10.13.2 The trustees should be careful not to discriminate against any applicant on the basis of a protected characteristic (in particular disability, see [section 10.26.7](#)).
- 10.13.3 Provided there is no reason to believe that an applicant would disrupt the good conduct of the almshouse, or the peace and quiet of the other residents, the trustees should always appoint the appropriately qualified individual who is in the greatest need.
- 10.13.4 The trustees should keep a record confirming why the applicant chosen meets the necessary criteria in preference to all other applicants. The trustees should check that the individual still meets the criteria to be a resident if the application process has taken some time.

**10.14 Approval of an unqualified applicant**

- 10.14.1 It may be that after carrying out a wide advertising campaign the only applicants are individuals who do not fully meet the necessary criteria (for example they might live just outside the area of benefit). The trustees cannot proceed to appoint such applicants, unless the Governing Document gives the





necessary authority. As discussed in [section 10.3.5](#) the relevant provisions would be in the terms of the trusts of the functional permanent endowment and not the Governing Document of a CIO or a company limited by guarantee.

- 10.14.2 If the Governing Document says that the trustees may appoint an unqualified individual in exceptional circumstances, then provided that the trustees have taken all reasonable steps to find a suitably qualified applicant (which should be documented so that the trustees can demonstrate the steps taken if challenged by the Charity Commission), and the appointment of the individual in question would not be directly against the spirit of the charity's objects, they can proceed with an appointment.
- 10.14.3 In older Governing Documents it is likely to state that the trustees can only make such an appointment in exceptional circumstances with the consent of the Charity Commission in which case such consent will need to be obtained.
- 10.14.4 If the Governing Document is silent, then the trustees cannot appoint an unqualified applicant without the consent of the Charity Commission.
- 10.14.5 If the trustees find that they are unable to fill vacancies on a regular basis then the trustees should take steps to amend the Governing Document to change the beneficial class ([see section 3.6.3](#)). Whilst it is generally possible to widen the beneficial class, it is not usually possible to narrow the beneficial class. The Charity Commission would need to be assured that any change proposed did not conflict with the wishes of the original benefactor or founder of the charity.

## 10.15 Letter of Appointment

- 10.15.1 Once the trustees have decided to appoint a suitable individual as a resident, they should issue a formal Letter of Appointment. It is recommended that this is based upon The Almshouse Association's template Letter of Appointment.

- 10.15.2 Purpose:

- (a) The Letter of Appointment:
  - (i) sets out the basis on which the individual has been appointed as a beneficiary of the charity, and evidences the resident's licence to occupy the almshouse; and
  - (ii) is not a tenancy agreement or a contractual licence.
- (b) In addition, the Letter of Appointment will set out the regulations that apply to the resident's occupation (or seek to incorporate the relevant provisions of the Resident's Handbook ([see section 10.16](#)) and require the resident to confirm that they accept these conditions.
- (c) It is important that the resident fully understands the meaning of the Letter of Appointment and this should be discussed with them before they are asked to accept the appointment.
- (d) It is recommended that residents are asked to sign an updated Letter of Appointment every few years, in particular if any changes have been made to the standard template used by the charity.

- 10.15.3 Content:

- (a) The Letter of Appointment should as a minimum:
- (b) record that the resident has been appointed as a beneficiary of the charity in accordance with the charity's Governing Document;
- (c) set out the details of the almshouse that has been allocated to the beneficiary (and make it clear that the individual may be asked to move to another almshouse in certain circumstances, e.g., in the case of repairs or refurbishment needing to be carried out);
- (d) set out the details of the WMC, and any other regular charges, and explain how this will be collected ([see section 9](#));
- (e) detail any regulations that relate to the resident's occupation of the almshouse (or incorporate by reference the regulations set out in the Residents' Handbook ([see section 10.16](#)) and confirm that the resident will be notified of any changes in the regulations from time to time. Trustees should always check that any regulations included in the Letter of



Appointment are consistent with the provisions of the Governing Document, which will take precedence;

- (f) provide the resident with details of how to raise any complaints in the future;
- (g) ask the resident to undertake to keep the trustees informed of any relevant changes in the circumstances that might affect their ability to qualify as a resident and note the trustees' right to ask for information from time to time to confirm that the individual continues to qualify as a resident; and
- (h) set out the circumstances in which the appointment can be terminated ([see sections 10.22, 10.24 and 11](#)).

#### 10.15.4 Process:

- (a) It is good practice for the Letter of Appointment to be issued in duplicate, with the resident being asked to sign and return one copy to show that they have understood and accepted the basis of their appointment and that they agree to comply with any regulations. This should be retained in the charity's records.
- (b) If a couple are appointed to an almshouse, then they should be issued with a joint Letter of Appointment and both asked to sign a copy.
- (c) When returning the Letter of Appointment, it is a good opportunity to ask the resident to complete and return the necessary paperwork for payment of their WMC by standing order or direct debit, or to provide evidence that arrangements have been made for the payment of the WMC. There is no requirement to ask residents to provide a deposit and it would be inappropriate to ask for this.

#### Further resources:



- The Almshouse Association website: see **Model Letter of Appointment** in [Model Policies and Templates](#)

### 10.16 **Residents' Handbook**

- 10.16.1 Most charities will also provide each resident with a Residents' Handbook that sets out in greater detail the regulations that apply to the resident's occupation of the almshouse and contains copies of all the policies that have been adopted by the charity that are relevant to the residents.
- 10.16.2 The Residents' Handbook supplements the information contained in the Letter of Appointment. The Letter of Appointment should seek to incorporate, by reference, the provisions of the Residents' Handbook. Throughout this publication the term "**Terms of Appointment**" is used to refer to the Letter of Appointment incorporating the terms of the Residents' Handbook.
- 10.16.3 The Residents' Handbook should always be made available in a format that is accessible to all.
- 10.16.4 Trustees should always check that the provisions of the Residents' Handbook are consistent with any regulations in the Governing Document, which will take precedence.
- 10.16.5 The Letter of Appointment should specify how the resident will be notified of changes to the Residents' Handbook and make it clear that the resident will be required to comply with future changes.

#### Further resources:



- The Almshouse Association website: see **Model Residents' Handbook** in [Model Policies and Templates](#)



## 10.17 Records

- 10.17.1 The charity should also consider what other information relating to each resident it is appropriate to record, and this should be requested from the resident at the earliest opportunity.
- 10.17.2 Records of a resident's personal information should be kept securely and only be accessible to those authorised by trustees in compliance with data protection legislation ([see section 15](#)). In order to comply with the obligations under the legislation the charity should only retain such information as is reasonably necessary.
- 10.17.3 Details that could be requested may include:
- (a) contact details for the resident's next of kin and permission to contact them in an emergency;
  - (b) contact details for a spare key holder (or confirmation that the charity will hold the spare key which would be recommended practice);
  - (c) details of any medication being taken by the resident which might be relevant in the case of a medical emergency only if volunteered by the resident. The resident should be asked for a written authority.
  - (d) details of any disabilities that may be relevant to the individual's occupation in the almshouse or in the case of a medical emergency;
  - (e) whether the resident has a will in place and, if so, where it is held in order that the resident's executors can be contacted if needed;
  - (f) whether the resident has a lasting power of attorney in place and, if so, the details of the attorney should they need to be contacted;
  - (g) GP details and permission to contact the GP in the case of an emergency, or if the resident's condition becomes a cause of concern.

### Further resources:



- The Almshouse Association website: see **Model Next of Kin Information Form** in [Model Policies and Templates](#)
- The Almshouse Association website: see **Model GP Authorisation Form** in [Model Policies and Templates](#)
- The Almshouse Association website: see **Model Medical Information Form** in [Model Policies and Templates](#)

## 10.18 Moving In

- 10.18.1 Once the Letter of Appointment has been accepted the charity should agree the proposed moving in date with the resident. If redecoration or refurbishment works need to be carried out to the almshouse these should be done before the resident moves in.
- 10.18.2 Moving home can be stressful and trustees should ensure new residents are made to feel welcome.
- 10.18.3 It is especially important for personal contact to be established and maintained where there are no staff employed on site.
- 10.18.4 The resident should be asked whether any help may be needed with removals, setting up home and connection to utilities (e.g., gas, water, electricity, call systems and telephone).
- 10.18.5 Prior to the resident moving in the charity should ensure that:
- (a) all utility supplies are connected and switched on and that all necessary safety checks have been carried (and certificates provided see [sections 7.9.2\(g\)](#) and [7.9.3\(c\)\(iii\)](#)) and the water system flushed through ([see section 7.9.4](#));
  - (b) the emergency call system, if any, has been checked with the call centre and a telephone installed if needed;
  - (c) the heating, hot water and fridge/freezer have all been switched on and set appropriately;



- (d) an up-to-date copy of the Residents' Handbook is available in a prominent position in the dwelling (and in a format accessible by the resident) and
- (e) a copy of the current Energy Performance Certificate for the almshouse is made available to the new resident ([see section 16.8.2](#)).

10.18.6 It is recommended that the charity has a meeting with the resident to hand over the keys and spare keys and to answer any immediate queries.

#### Summary of Appointment Process

- (1) Confirm the relevant provisions of the Governing Document that detail who is eligible to be a resident and the process for making an appointment.
- (2) Advertise the vacancy generally and in accordance with the requirements, if any, of the Governing Document.
- (3) Request applicants to complete an application form.
- (4) Review the completed applications form to confirm, in particular:
  - (a) applicants meet the criteria to be a resident;
  - (b) the financial means of applicants; and
  - (c) the immigration status of applicants.
- (5) Prepare a short list of applicants for further review.
- (6) Carry out a home visit of those on the short list with a view to confirming that the applicant would be a suitable person to join the community of almshouses and capable of independent living.
- (7) If there are any concerns over an individual's ability to live independently, make follow up enquires (if authorised) with the individual's GP and/or family.
- (8) Arrange an interview for appropriate applicants.
- (9) Trustees hold a quorate meeting, in accordance with the relevant provisions of the Governing Document, to appoint the applicant as a resident.
- (10) Issue Letter of Appointment and confirm moving in date.
- (11) Ask resident to provide details of:
  - (a) next of kin (and permission to contact);
  - (b) any spare key holder;
  - (c) medication being taken (only if volunteered by the resident);
  - (d) any disabilities that may be relevant to the resident's occupation of the almshouse;
  - (e) whether they have a will and, if so, where it is held;
  - (f) whether they have any lasting powers of attorney and, if so, who holds these; and
  - (g) their GP (and permission to contact).
- (12) Prepare the almshouse in preparation for the new resident:
  - (a) ensure all utilities are connected, that necessary safety checks have been carried out and certificates left in the almshouse;
  - (b) check any emergency call systems;
  - (c) turn on the heating, hot water and fridge/freezer;
  - (d) ensure a copy of the Residents' Handbook is available in the almshouse;



- and
- (e) make a copy of the Energy Performance Certificate available to the new resident.

### 10.19 Pets

- 10.19.1 Residents may ask if they can keep pets in their almshouse and charities are obliged to give full consideration as to whether they will agree and, if declining, need to be clear as to the reasons.
- 10.19.2 Pets may help older people combat loneliness and studies have shown that pets can bring therapeutic benefits for their physical and mental health. However, before permitting residents to have a pet consideration has to be given to the impact on other residents. The layout of the almshouses will dictate the variety and size of pets that can be sensibly allowed.
- 10.19.3 Trustees should develop a clear policy stating whether pets are or are not allowed and, if allowed, the conditions that apply and include this in the Terms of Appointment.
- 10.19.4 Trustees should note that they are obliged to accommodate service animals that are trained to perform tasks that help alleviate their owner's disabilities<sup>152</sup>. Such animals could include guide dogs and hearing dogs for deaf people. At present, emotional support and therapy animals are not required to be permitted.

#### Further resources:



- [Cinnamon Trust advice and help in looking after pets in sheltered housing](#)

### 10.20 Guests

- 10.20.1 Residents may ask if they can invite guests to stay overnight in the almshouse. The trustees should always check whether the Governing Document ([see section 10.3.2](#)) contains any prohibition on overnight guests and, if it does, this prohibition should be followed.
- 10.20.2 There is no legal obligation to permit overnight guests to stay in the almshouse. If the trustees permit guests, it is important that trustees have oversight of how often guests are staying, and for how long, so that there are no extended stays that could cause an inadvertent breach of trust as a result of the accommodation being used by individuals who do not qualify as beneficiaries. In addition, overnight guests that stay on a long-term basis can be problematic and cause difficulties if it becomes necessary to ask them to leave and they refuse to do so voluntarily.
- 10.20.3 Trustees should develop a guest policy, which is consistent with the criteria set out in the Governing Document (if applicable) and considers the size of the property, and the impact of guests on the wider almshouse community.
- 10.20.4 This policy should be set out in the Terms of Appointment ([see section 10.16.2](#)).
- 10.20.5 The length and regularity of visits should be limited and where overnight guests are allowed, residents should be encouraged to let the charity know in advance. This is particularly important for fire safety.
- 10.20.6 If separate accommodation is provided for guests then appropriate arrangements should be put in place for the booking and cleaning of this accommodation.

### 10.21 Television Licences

- 10.21.1 Each resident will need a TV licence to use any television-receiving equipment including TV set, set-top box, video or DVD recorder, PC, tablet or mobile phone to watch live, stream on demand, or record programmes as they are being broadcast. This includes foreign broadcasts.
- 10.21.2 There are concessions in relation to the TV Licence fee for:
- (a) people who are aged 75 or over and receive pension credit;



- (b) people who are blind (severely sight impaired); and
  - (c) people who live in qualifying residential care and are disabled or over 60 and retired (or work no more than 15 hours per week).
- 10.21.3 An almshouse will be treated as qualifying residential care if:
- (a) the building itself, the land it was built on or charity was established before 1 November 1949;
  - (b) it is a care home registered under the Care Standards Act 2000; or
  - (c) there are at least four dwellings within a common and exclusive boundary and there is a person whose role is to care for the needs of the residents (e.g., a warden) and who either lives on site or works for at least 30 hours a week, excluding on-call hours.
- 10.21.4 If the almshouses qualifies, then the charity will need to apply for a licence for any communal areas, guest rooms and/or staff accommodation where a TV may be used. The residents should be informed that they are eligible for the concessionary licence, but in each case they will still need to obtain their own licence.

**Further resource:**



- Further detail can be found at: [Check if you need a TV Licence](#)

**10.22 Change of resident's circumstances**

- 10.22.1 It is likely that a resident may live in the almshouse for many years and, during this time, there may be changes in their personal circumstances that mean they no longer qualify to be beneficiaries of the charity.
- 10.22.2 For example:
- (a) changes in their marital status (e.g., getting married in circumstances where beneficiaries are required to be single);
  - (b) changing faith in circumstances where there is a requirement to be of a particular faith; or
  - (c) changes in their financial circumstances due to the receipt of a legacy or other financial windfall.
- 10.22.3 If the individual no longer meets the criteria to be a beneficiary of the charity, the trustees should in most cases ask the individual to vacate their almshouse as their continued occupation would potentially be a breach of trust.
- 10.22.4 Before deciding how to proceed the trustees should consider:
- (a) the wishes of the resident;
  - (b) the resident's individual circumstances (e.g., the nature of the change in their circumstances, age, health and physical capacity);
  - (c) what alternative accommodation might be available to the resident;
  - (d) the current demand for vacancies; and
  - (e) the potential reputational impact of asking the individual to leave the almshouse.
- 10.22.5 If asking the individual to leave might have a significantly prejudicial impact on the individual or be damaging to the charity's reputation, it may be appropriate for the trustees to exercise their discretion to allow the individual to remain as a resident.
- 10.22.6 If the trustees are in doubt about whether or not the individual's continued occupation is acceptable, they should seek legal advice and/or consult the Charity Commission.



### 10.23 Voluntary Departure of a resident

- 10.23.1 The Terms of Appointment will normally set out the process to be followed by a resident who wishes to leave the almshouse. The process should detail:
- (a) the amount of notice to be given and to whom the notice should be given;
  - (b) the point at which WMC ceases to be payable (i.e., after the expiry of the notice, or the date on which the almshouse is cleared of the resident's furniture and possessions if later);
  - (c) set out what will happen if the resident fails to clear their furniture and/or possessions; and
  - (d) arrangements for closing utility accounts.
- 10.23.2 Once notice has been given by a resident, the charity should liaise with the resident:
- (a) to finalise payment of any WMC that may be due;
  - (b) to deal with the closure of the utility accounts; and
  - (c) to confirm the date on which the resident will be moving out and whether any assistance is needed with the process.
- 10.23.3 If a resident asks to leave immediately, they should still be required to pay all WMC that would have been due during any notice period. Any decision to waive WMC that is due could be considered an ex-gratia payment (see section 6.7.4).
- 10.23.4 Depending upon the circumstances, it may be appropriate to discuss the move with the resident's next of kin (provided the charity has permission from the resident to discuss issues with the next of kin).
- 10.23.5 Once the almshouse is empty the charity should:
- (a) check the condition of the almshouse and identify any repairs or redecoration that may be necessary before a new resident can move in;
  - (b) notify the local authority to claim an exemption for the almshouse from payment of council tax until a new resident moves in or until the expiry of six months from the date on which the resident moved out, whichever comes first<sup>153</sup>.

### 10.24 Abandonment of the almshouse by a resident

- 10.24.1 If a resident abandons their almshouse then the charity should take steps to find out whether the resident has left intentionally. In particular the charity should:
- (a) try to contact the resident using any contact mobile telephone number or email address that has previously been provided to the charity;
  - (b) speak to other residents to find out if they are aware of any reason why the resident has left;
  - (c) speak to the resident's next of kin (if the resident has previously given permission to the charity to speak to them); and
  - (d) if no reasons for the departure can be found, the charity should contact the police and notify them that the resident has gone missing.
- 10.24.2 Once enquiries have been completed and a suitable period has passed, if the trustees are of the reasonable opinion that the resident has no plans to return to the almshouse the trustees should pass a resolution to set aside the resident's appointment.
- (a) Before taking any steps to pass a resolution the trustees should check what provisions the Governing Document makes in relation to absences from the almshouse. For example, some Governing Documents may provide that the appointment can be set aside after an unauthorised absence of more than 28 days.
  - (b) The Governing Document may specify that a resolution to set aside an appointment must be carried out in a particular manner (e.g., at a "special meeting" of the trustees called for that purpose).



- 10.24.3 Once the resolution has been passed the charity should prepare a copy of the resolution, a notice setting aside the appointment and a notice determining the resident's licence of the almshouse. Copies of these documents should be:
- (a) affixed to the front and back doors of the almshouse;
  - (b) affixed to any communal means of entry to the almshouses; and
  - (c) sent to the resident using any other forms of communication which have previously been used with the resident (e.g., email).
- 10.24.4 Once the notice period given in the notices has expired, if the resident has not been in contact or made any attempt to return to the almshouse, the locks on the almshouse should be changed.
- 10.24.5 If furniture and/or other possessions remain in the almshouse then appropriate steps need to be taken to clear the almshouse at the charity's expense. At least two individuals from the charity should enter the almshouse, make it secure and make a list of all of the contents. It is advisable to keep a photographic inventory of the contents, in particular of any items that are of value.
- 10.24.6 The trustees should follow any procedure in relation to abandoned goods that may be specified in the Terms of Appointment.
- 10.24.7 Even though the items have been abandoned, the trustees have a duty:
- (a) not to deliberately or recklessly damage or destroy the items; and
  - (b) to take care, if trying to return the goods to the resident through a third party (e.g., next of kin), to confirm that the third party actually has authority to receive them.
- 10.24.8 Provided the goods have truly been abandoned, the trustees can take reasonable steps to sell, give away or dispose of the items and what is considered reasonable will depend upon the circumstances. For instance, perishable items can be disposed of using refuse collection services. If there are any items of value (e.g., cash, jewellery, share certificates or bonds, building society pass books or other valuables) then legal advice should be taken as to the appropriate steps the trustees should take. It is not clear whether the provisions of the Torts (Interference with Goods) Act 1977 apply to items that have been abandoned in this way, and therefore in each case appropriate advice should be sought relevant to the prevailing circumstances.
- 10.24.9 If the trustees are in any doubt about their rights in relation to setting aside the resident's appointment, taking possession of the almshouse or dealing with the resident's possessions that are left in the almshouse, they should take legal advice.
- 10.24.10 Once the almshouse has been cleared the charity should follow the steps set out in [section 10.23.5](#) above.

**Further resources:**

- The Almshouse Association website: see **Model Notice to Set Aside** in [Model Policies and Templates](#)
- The Almshouse Association website: see **Model Notice to Determine** in [Model Policies and Templates](#)

**10.25 Death of a resident**

- 10.25.1 If a resident is found to have died then:
- (a) if the death was expected (for example following a period of palliative care) the charity should contact the resident's GP immediately and notify any next of kin if they were not present. If the GP cannot be contacted the charity should call 999 and seek advice; and
  - (b) if the death was not expected the charity should call 999 and seek advice. It may be necessary for the death to be reported to the coroner.



- 10.25.2 The charity should not take any steps to move the resident's body until either the GP or the coroner has attended at the almshouse and certified the death. If the death is unexpected, it may be necessary for the coroner to carry out further investigations before the death can be certified. The almshouse should be kept secured until the GP or coroner have attended.
- 10.25.3 If the charity is registered for nursing or residential care then the appropriate registration authority ([see section 14](#)) needs to be informed of the death.
- 10.25.4 The charity should inform:
- (a) the trustees;
  - (b) the next of kin (if details are available);
  - (c) the individuals named as executors in the resident's will (if details are available);
  - (d) the resident's solicitor (if details are available); and
  - (e) any individual acting as the resident's attorney (if details are available).
- 10.25.5 When contacting the individuals mentioned in [section 10.25.4](#) the charity should take steps to identify who is responsible for arranging the resident's funeral (the "**Responsible Person**"). The Responsible Person would normally be the individual appointed as executor under the deceased resident's will. If no such person has been appointed, then this would normally be a family member, and the charity should not become involved in disputes between family members as to who is responsible. If the charity is unable to identify any individual who has this responsibility, the charity should inform social services who will then be responsible for making the necessary arrangements. If there is no next of kin the "Responsible Person" can be the local authority, social services.
- 10.25.6 The death needs to be registered with the local Registrar within five days. This cannot be done by the charity. The registration needs to be done by a relative of the resident. If there is no relative who can register the death then the death can be registered by:
- (a) anyone who was present at the time of death; or
  - (b) anyone who is responsible for making the funeral arrangements for the resident.
- 10.25.7 Arrangements for removing the resident's body and their funeral should be made by the Responsible Person. The charity should check that the individual carrying out this role has the appropriate authority and, if in doubt, should seek legal advice. The charity should co-operate fully to ensure that the process is dealt with in a dignified manner. The charity should be able to provide, upon request, details of local funeral directors.
- 10.25.8 After the resident's body has been removed, the almshouse should be made safe and remain locked until the Responsible Person has made appropriate arrangements to remove the contents. The charity should take steps to retrieve all keys that are held by any individuals, apart from anyone who is entitled to administer the deceased's assets. It would be advisable to liaise with the Responsible Person:
- (a) at the earliest opportunity to identify any valuables or other significant items in the almshouse and make appropriate arrangements for them to be kept safely or secured;
  - (b) to provide any details held by the charity in relation to the resident's finances (for example in relation to pensions or benefits that are being claimed); and
  - (c) to discuss the arrangements for clearing the almshouse.
- 10.25.9 If the charity enters the almshouse at any point during this period it is advisable for this to be done by two people and for detailed records to be kept of all steps carried out and/or details of any items removed from the almshouse for safekeeping.
- 10.25.10 The charity should also inform staff and other residents of the death. This should be done with tact and consideration. It may be appropriate to provide guidance on bereavement counselling.
- 10.25.11 Depending upon the terms of the Terms of Appointment, WMC would normally remain payable by the resident's estate up until the point at which the almshouse is vacated (i.e., the possessions and furniture have been cleared) and the keys returned to the charity.





- 10.25.12 If no steps are taken by the Responsible Person to clear the almshouse within an appropriate period, the charity should take legal advice about its rights to dispose of the possessions and claim the cost of such disposal from the resident's estate.

**Summary procedure to follow on the death of a resident**

- (1) If the death was:
  - (a) expected – contact the resident's GP / next of kin, but if they are not available phone 999;
  - (b) unexpected – phone 999.
- (2) Secure the almshouse and ensure that nothing is moved until the GP or the coroner have attended.
- (3) Inform trustees and (in each case if details have been provided):
  - (a) next of kin;
  - (b) the resident's executors;
  - (c) the resident's solicitor; and
  - (d) any individual acting under a power of attorney.
- (4) Identify the person responsible for dealing with resident's affairs (the **Responsible Person**) and, if no-one can be identified, contact social services.
- (5) Liaise with the Responsible Person to ensure that they arrange for the resident's body to be removed.
- (6) Retrieve all keys for the almshouse from third parties other than the Responsible Person.
- (7) Liaise with the Responsible Person to arrange for the almshouse to be cleared.
- (8) If no third party takes responsibility for dealing with the resident's affairs, take legal advice on the appropriate steps to follow.

**Further Resources**



- Use the Government "Find a register office" service: [Find a register office](#)

**10.26 Resident's health and well-being**

- 10.26.1 Residents are expected to be capable of independent living (see section 10.11) and should take responsibility for their own physical and mental wellbeing, but in exceptional cases this may not be possible. The trustees should be very careful to avoid the charity being found to have accepted responsibility for an individual resident's health and well-being.
- 10.26.2 If the charity is concerned about a resident's health or well-being they should contact:
- (a) the resident's next of kin (if details are available and the charity has permission);
  - (b) the resident's GP (if details are available and the charity has permission); or
  - (c) social services and request that a risk assessment is carried out to confirm that the resident is not a risk to themselves or others.

**10.26.3 Medical care:**

- (a) The charity should not take on responsibility for dispensing medicines or changing dressings or performing any other form of medical assistance.
- (b) The charity should not take on responsibility for any type of personal care (see section 14) activities for the resident as this could result in a requirement to register the activity with the CQC<sup>154</sup> or CIW or other regulator.

**10.26.4 Smoking:**

- (a) The charity must prohibit smoking in all communal parts of the almshouses, including entrance halls, corridors, common rooms and offices for staff<sup>155</sup>. The legal definition of smoking does not apply to e-cigarettes, but it recommended that the use of e-cigarettes should also be prohibited in all communal areas out of regard for other individuals using the premises.
- (b) There is no legal requirement to prevent residents from smoking in their almshouse.
- (c) The charity may wish to consider imposing a restriction in the Terms of Appointment requiring residents to abstain from smoking in their almshouse. The trustees should note that:
  - (i) It would not be appropriate to advertise vacancies for “non-smokers” only, as the trustees have a duty to provide the accommodation to those most in need (see section 10.4). If the charity wishes to impose a non-smoking policy on residents this should be discussed with potential applicants at the interview stage.
  - (ii) Imposing a no smoking policy on existing residents might be detrimental to the charity’s reputation. Any such policy should potentially be introduced gradually on a case-by-case basis as new residents are allocated almshouses making it clear that the intention is to phase out smoking in the almshouses.
- (d) If smoking is permitted:
  - (i) Residents should be made aware of the safety hazards of leaving lit cigarettes unattended or falling asleep whilst smoking.
  - (ii) It would be appropriate to make clear in the Terms of Appointment that any damage to property and/or discolouration caused by smoking will lead to the resident being liable for the cost of repair or redecoration. Residents who smoke should be advised to ensure that their almshouse is frequently aired to disperse the smoke.
  - (iii) Residents who smoke should be asked to be considerate to the impact on other residents and made aware that anti-social behaviour may be a ground for their appointment to be set aside.

**10.26.5 Alcohol:**

- (a) If a resident’s consumption of alcohol is adversely affecting the lives of other residents, the subject should be raised tactfully with the resident, with a view to offering support rather than criticism.
- (b) If the situation cannot be resolved amicably, the resident should be made aware that anti-social behaviour may be a ground for their appointment to be set aside.

**10.26.6 Dementia:**

- (a) The term “dementia” describes symptoms which can include memory loss, mood changes, a lack of awareness of time and problems in communicating and reasoning. Although some symptoms of dementia are common, the experience of every individual who suffers from dementia is different.
- (b) If the charity is concerned that a resident may be suffering with dementia, then the trustees should approach the issue in consultation with the resident, their next of kin (if the charity has permission to contact them) and social services.



- (c) If the trustees form the view that the resident's behaviour is putting the resident themselves, or others, at risk and they can no longer live independently in the almshouse the trustees need to take appropriate steps to set aside the resident's appointment. Such a step should always be carried out as sensitively as possible and in a consultative manner with the resident, accepting that residents must be allowed as much choice and freedom as possible to live as they wish.
- (d) In all such cases the charity needs to be careful to avoid providing any form of additional services or activities that could be considered regulated activity<sup>156</sup>.

#### 10.26.7 Disability:

- (a) A person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day to day activities<sup>157</sup>.
- (b) It is likely that a large proportion of residents will suffer a disability. Residents who live in an almshouse for a long period of time may develop mobility problems and increased weakness as they age. Some disabilities may be temporary after illness and therefore treatable whilst others may require on-going adjustments to be made.
- (c) It is unlawful to discriminate against a person because of their disability.
- (d) The Equality Act 2010 imposes a duty on the charity to make reasonable adjustments to provide for people with a disability.
- (e) In relation to the occupation of an almshouse, the charity may have to make reasonable adjustments in response to a request from a resident, for example:
  - (i) take reasonable steps to change how things are done, e.g., providing the Terms of Appointment or any signs in the almshouses or communal areas in an accessible format;
  - (ii) providing auxiliary aids, for example replacing the taps with lever taps, or changing door handles to meet the resident's needs; and
  - (iii) potentially changing terms in the Terms of Appointment ([see section 10.16.2](#)) that could prejudice a disabled resident (for example an obligation to keep the garden area of the almshouse well-tended).
  - (iv) The charity cannot be required to alter a physical feature, but the definition of physical feature expressly excludes furniture, furnishings or materials, equipment, chattels, signs or notices, taps or door handles, doorbells or door entry systems, or changes to colours of walls, doors or other surfaces<sup>158</sup>.
- (f) The Equality Act 2010 also imposes an obligation to ensure that reasonable adjustments are made to common parts of the almshouses, however this obligation is not yet in force<sup>159</sup>.
- (g) All new properties that are constructed are required to comply with the Equality Act 2010<sup>160</sup>.
- (h) The Equality Act 2010 does not override any other legislation that may be relevant, for example listed building or planning legislation or building regulations. The charity will need to consider whether any changes that are being considered may require appropriate consent and seek such consents before proceeding to make any changes.
- (i) When considering what is "reasonable" the trustees should consider<sup>161</sup>:
  - (i) how effective the proposed change will be in avoiding the disadvantage the resident would otherwise experience;
  - (ii) how practical the proposed change is (i.e., is the change consistent with independent living);
  - (iii) the cost involved in making the proposed change (and the charity cannot charge the resident for making the change<sup>162</sup>);
  - (iv) the charity's resources and ability to fund the proposed change; and
  - (v) the available of any other financial support to fund the proposed change.



- (j) Where possible trustees should always take steps to ensure that the almshouses are accessible to people suffering from a disability. Where appropriate the trustees should liaise with the resident's occupational therapist and assist to tailor the accommodation to the resident's needs. Where alterations would need to be made to the physical structure of the almshouse (for example replacing a bath with a walk-in shower) the trustees will need to take appropriate advice as to whether carrying out such work is permitted under planning legislation and consider the associated costs. However, the trustees should make it clear when considering alterations, that there may be a limit on what may be acceptable and if access is becoming an issue, the resident may need to start considering alternative accommodation.
- (k) A resident with disabilities is also entitled to the provision of welfare services from the local authority<sup>163</sup>. The resident should be advised to contact the local authority to obtain appropriate welfare services.

**10.26.8 Mental capacity:**

- (a) If the charity forms the view that the resident lacks the mental capacity to make rational decisions, after discussions with the resident, the charity should discuss the position with the next of kin and/or the resident's GP (in each case provided the charity has permission to do this).
- (b) If there are concerns that the resident is a threat to themselves or others due to a lack of mental capacity then the position should be discussed with social services.
- (c) The charity should keep clear records of any discussions about a resident's lack of mental capacity and the steps taken.

**10.27 Disputes, Conflicts and Complaints**

10.27.1 The charity should have a clear policy in relation to disputes, conflicts and complaints. The policy should be transparent and illustrate fairness and impartiality of any process used to resolve disputes, conflicts and complaints.

10.27.2 If there is an issue between the resident and the charity:

- (a) those representing the charity should avoid being defensive or dictatorial;
- (b) the trustees should consider using the services of an external independent mediator;
- (c) the charity should make sure that the resident is given the opportunity to invite a friend or relative, or advised to consider using the services of an independent advocate, in particular if they are a vulnerable person;
- (d) the charity should reassure the resident that raising a complaint will not put their residency in jeopardy; and
- (e) the charity should keep clear written records of all meetings and/or interactions with the resident in relation to the dispute.

10.27.3 Residents should be made aware that any complaint they make should be specific to them and not made on behalf of another resident unless there is a good reason why the affected resident cannot make the complaint themselves.

10.27.4 The policy should set out the process for managing complaints:

- (a) The procedure should be transparent, independent, fair and dealt with in confidence.
- (b) Receipt of complaints should be acknowledged in writing within a fixed time period and the charity should advise the complainant of the next course of action and the anticipated timescale for responding.
- (c) The resident should be invited to attend an investigative meeting and may be accompanied by a friend, advocate or professional advisor.
- (d) In every case, a two-tier complaints system is recommended. For example, if the first point of contact rejects a complaint, there should be someone else appointed whose task it is to



review the case and provide a second opinion or a right to refer the matter to the trustees as a whole.

- (e) Once the complaints procedure has been exhausted, residents may be able to refer their complaint to the Housing Ombudsman Service ([see section 10.28](#)).

#### Further resources:



- The Almshouse Association website: see **Model Complaints Policy** in [Model Policies and Templates](#)
- The Almshouse Association website: see **Model Hospital Admission and Hospital Discharge templates** in [Model Policies and Templates](#)

## 10.28 The Housing Ombudsman Service

- 10.28.1 The Housing Ombudsman Service is an independent and impartial body established to look at complaints about the housing organisations registered with it. It is an executive, non-departmental public body, sponsored by the Ministry of Housing, Communities and Local Government.
- 10.28.2 The Ombudsman resolves disputes involving the tenants of social landlords and voluntary members who are committed to good service to their tenants.
- 10.28.3 All charities registered with the Regulator of Social Housing are under the Ombudsman's jurisdiction in accordance with the Housing Act 1996 and Localism Act 2011. Almshouse charities that have at any time been registered with the Regulator (or formerly with the Homes and Communities Agency) and have subsequently de-registered, remain within the jurisdiction of the Ombudsman.
- 10.28.4 Charities that are not registered with the Regulator may apply for voluntary membership of the Service. Membership demonstrates commitment to high quality services and disputes handled inappropriately cost time and money, can damage relationships and, if left unresolved, can escalate. Charities interested in becoming members of the voluntary scheme must contact the Ombudsman who will require information about the charity as well as assess their eligibility. There is an annual subscription.
- 10.28.5 Residents of charities that are members of the Housing Ombudsman Service can only make a formal complaint to the Ombudsman if they have reported the original problem to the trustees and are dissatisfied with the service that they have received in response. They must have exhausted the charity's procedure for handling complaints. Once this condition is met, there are two ways forward:
- (a) When the internal complaints procedure is finished, the resident can ask for their complaint to be considered by a designated person – for example, an MP, local councillor. The role of the designated person is to try to resolve the complaint themselves, and, if failing to do so, to refer it to the Ombudsman.
- (b) The complainant may refer the complaint directly to the Ombudsman if, having exhausted the internal complaints procedure of the charity, a period of eight weeks has elapsed. The process using a designated person may therefore be seen as a fast-track way of making a referral. A complainant may also be able to make a direct referral if the Ombudsman is satisfied that a designated person has refused to refer the complaint, or if a designated person has agreed that the complainant can complain to the ombudsman directly.
- 10.28.6 Residents of charities that are not members of the Housing Ombudsman Service who have an unresolved complaint, may contact the Ombudsman, but it will be for the Ombudsman to decide whether to deal with the matter as each case will be assessed on its own merits.

#### Further resources:



- [Housing Ombudsman Service](#)



## CHECKLIST – RESIDENTS

### Criteria

- ☒ Confirm what terminology is used to refer to “residents” by the charity?
- ☒ Do all trustees understand that residents occupy the almshouses as beneficiaries of the charity and that they are not tenants?
- ☒ Do all trustees know which Governing Document sets out the trusts that detail who is eligible to be a beneficiary of the charity?
- ☒ Do all trustees know the criteria that beneficiaries need to meet?
- ☒ Do residents have to come from a particular geographical area of benefit?
- ☒ Do the trustees have a clear understanding of how financial hardship is assessed?
- ☒ Do the trustees understand that priority should always be given to those in the most need, even if financial need is not a criterion to be a beneficiary?
- ☒ Does the Governing Document permit couples to be residents?

### Appointment

- ☒ Do all trustees understand that it is their duty to appoint residents, and that this duty cannot be delegated?
- ☒ Does the Governing Document set out the process for appointing residents?
- ☒ Does the Governing Document stipulate the form of any advertisement that must be used to advertise vacancies?
- ☒ Is the charity party to any nomination agreements that must be followed when vacancies arise?
- ☒ Does the charity have a proper application process, with appropriate application forms?
- ☒ Does the charity check the financial means of all applicants?
- ☒ Does the charity check that all applicants are capable of independent living?
- ☒ Does the charity have a clear check list of items to cover during any interview of applicants?
- ☒ Do all trustees know the process set out in the Governing Document for making an appointment and is this always followed?
- ☒ Does the Governing Document give the trustees any discretion to appoint unqualified applicants?
- ☒ Does the charity have an up-to-date template Letter of Appointment?
- ☒ Has the charity’s Residents’ Handbook been updated recently and do all residents have a copy?
- ☒ Is the Letter of Appointment consistent with the provisions in the Governing Document that relate to residents?
- ☒ Is the Residents’ Handbook consistent with both the Letter of Appointment and the provisions in the Governing Document that relate to residents?
- ☒ Does the charity have a check list of records to request from new residents?

### Occupation

- ☒ Does the charity have a check list of issues to be dealt with on each new occupation?
- ☒ Does the charity have a clear policy on the keeping of pets?
- ☒ Does the charity have a clear policy on overnight guests?



- ☒ Has the charity reminded all residents that they need to obtain their own TV licences?

#### Departure

- ☒ Does the charity carry out periodic reviews of residents to ensure that they still meet the criteria to be a beneficiary?
- ☒ Does the charity have a check list to follow on the departure of a resident?
- ☒ Do trustees understand the process to follow if it appears that a resident has abandoned their almshouse?

#### Death of a resident

- ☒ Do all members of the charity know the procedure to follow in the event of a resident being found dead?

#### Health and Well-Being

- ☒ Are all trustees clear on the extent of their duty of care for residents' health and well-being?

#### Complaints

- ☒ Does the charity have a clear complaints process to manage complaints and disputes?
- ☒ Is the charity a member of the Housing Ombudsman scheme?

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#### References:

- 148 **Gray v Taylor [1998] WLR 1** as confirmed in the more recent case of **Ashtead United Charity v. Watts [2016] EWCA CIV 1247**.
- 149 See the Equality Act 2010.
- 150 See Section 193 of the Equality Act 2010.
- 151 Sections 20 – 37, Immigration Act 2014.
- 152 See the Equality Act 2010.
- 153 Class B of Regulation 3 of The Council Tax (Exempt Dwellings) Order 1992 provides that an exempt dwelling is "a dwelling owned by a body established for charitable purposes only, which is unoccupied and has been so for a period of less than 6 months since the last occupation day, and was last occupied in furtherance of the objects of the charity".
- 154 Registration may be required under the Health and Social Care Act 2008 further to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 155 See the Health Act 2006.
- 156 See note 154.
- 157 Section 6(1) of the Equality Act 2010.
- 158 Paragraph 2(9) of Schedule 4 of the Equality Act 2010.
- 159 Paragraphs 5 – 7 of Schedule 4 of the Equality Act 2010.
- 160 Part M of Schedule 1 of The Building Regulations 2010.
- 160 Equality and Human Rights Commission – "What is meant by reasonable?"
- 162 Section 20(7) of the Equality Act 2010.
- 163 Section 2 of The Chronically Sick and Disabled Persons Act 1970 and the Disabled Persons (Services, Consultation and Representation) Act 1986.



## 11 SETTING ASIDE AN APPOINTMENT

### 11.1 Introduction

- 11.1.1 An almshouse is a resident's home. Where possible a resident should be supported to remain in their almshouse for as long as possible.
- 11.1.2 However, in some circumstances it may be necessary to set aside a resident's appointment. Given the potential impact this will have on a resident it is important that the trustees follow the proper process and ensure that their decision to set aside an appointment is properly informed and documented.
- 11.1.3 If the charity engages in open, ongoing and transparent communication with residents this will enable problems to be addressed at an early stage before they escalate and may reduce the circumstances in which it will be necessary to formally set aside an appointment.
- 11.1.4 If the charity is in any doubt about the process to be followed to set aside an appointment, or requires any assistance with the process, it is advisable to:
- (a) consult with The Almshouse Association which can offer practical guidance; and
  - (b) instruct a solicitor with experience of acting for almshouses in relation to the setting aside of an almshouse appointment and who has knowledge of charity law (details of appropriate solicitors can be found on The Almshouse Association's Panel of Consultants).
- 11.1.5 If the charity has employees some activities relating to the setting aside of an appointment may be delegated to employees by the trustees. Where references are made to activities being carried out by the "charity" this indicates that the activity can be carried out by the trustees and/or by the charity's employees. Given that the setting aside of an appointment is a serious matter, employees would be expected to keep trustees fully informed of developments and consult with the trustees throughout the process.
- 11.1.6 In this chapter where it refers to the **Terms of Appointment** this means (as explained in [section 10.16.2](#)) both:
- (a) the resident's Letter of Appointment which evidences their licence to occupy the almshouse ([see section 10.15](#)); and
  - (b) the terms of the Residents' Handbook ([see section 10.16](#)) which are normally referred to and incorporated as part of the Letter of Appointment.

#### Further resources:



- The Almshouse Association: [Panel of Consultants](#)

### 11.2 Reasons for setting aside an appointment

- 11.2.1 There are three main reasons why an appointment may be set aside:
- (a) the resident is no longer capable of living independently;
  - (b) the resident no longer qualifies as a beneficiary of the charity; or
  - (c) the resident is in breach of the terms of their appointment ([see section 11.1.6](#)).
- 11.2.2 The trustees must be able to substantiate a valid ground for setting aside the appointment.
- 11.2.3 The appointment is not a tenancy<sup>164</sup> ([see section 10.2](#)) and therefore an appointment cannot be terminated in the same way as a tenancy.
- 11.2.4 An appointment cannot be set aside by the trustees on a no-fault basis (i.e., by simply giving notice without a reason) unless this has been expressly provided for in the Terms of Appointment ([see section 11.1.6](#)) which would be unusual.





### 11.3 Resident is no longer capable of living independently

- 11.3.1 Trustees have a duty of care to ensure that residents are capable of living independently, within the almshouse. If trustees consider that an individual is no longer capable of living independently without being a danger to themselves or others, the trustees have a duty to set aside the appointment<sup>165</sup>.
- 11.3.2 Before deciding to set aside an appointment, the charity should:
- (a) consult fully with:
    - (i) the resident;
    - (ii) the resident's next of kin (if the resident has given permission for the charity to do this);
    - (iii) the resident's GP (if the resident has given written authority for the charity to do this) ([see section 10.11](#)); and
    - (iv) social services to investigate whether the resident's current needs can be supported by the provision of third-party care packages and/or other assistance; and
  - (b) consider whether the resident could be moved to a more suitable almshouse (e.g., if the resident is on the first floor would it assist them to move to a ground floor almshouse, if any are vacant or any resident is prepared to change?).
- 11.3.3 It is likely that the resident, their next of kin, GP and/or social services may, with the best of intentions, try to find ways for the resident to remain in their almshouse. The decision whether or not to set aside the appointment ultimately sits with the trustees. Whilst the trustees should support the resident, the trustees should be careful to ensure that the charity is not involved in providing any form of support to the resident which could be viewed as a regulated activity ([see section 14](#)). In particular, the trustees should consider whether the resident is able to live independently without being a potential danger to themselves or other residents.
- 11.3.4 If the resident has been away from the almshouse, for example as a patient in hospital, the trustees cannot prevent the resident from returning home, even if they consider that the individual cannot live independently. The trustees should communicate their concerns to the resident but must still follow the due process to set aside the appointment.
- 11.3.5 Any consultation carried out with the resident should be recorded in writing. It is advisable that at least two individuals from the charity attend any consultation meetings and, if possible, at least one of the individuals should be a trustee.
- 11.3.6 A resident who is no longer capable of living independently is likely to be viewed as being a vulnerable adult so the charity should proceed carefully and in line with the charity's safeguarding policy ([see section 6](#)). If the resident no longer has mental capacity, then it will be necessary to establish whether or not the resident has appointed anyone under a power of attorney to act on their behalf before any proceedings can be taken (this information may have been requested when the resident was appointed, [see section 10.17](#)). If no attorney has been appointed it may be necessary for an application to be made to the Court of Protection to appoint a deputy to act on behalf of the Resident and, in these circumstances, legal advice should be taken at the outset.

### 11.4 Resident no longer qualifies as a beneficiary

- 11.4.1 Trustees have a duty to ensure that residents qualify as beneficiaries of the charity ([see section 10.3](#)).
- 11.4.2 If trustees consider that a resident no longer qualifies as a beneficiary of the charity they should take steps to set aside the appointment unless there are circumstances that justify the resident continuing to occupy the almshouse ([see section 2.4.5](#)).



## **11.5 Resident is in breach of the Terms of Appointment**

- 11.5.1 The charity's Governing Document ([see section 3.5](#)) and the Terms of Appointment will set out the circumstances in which the resident's appointment may be terminated by the trustees which may include:
- (a) failure to pay WMC ([see section 9](#));
  - (b) unauthorised absence from the almshouse for an extended period;
  - (c) serious breach and/or persistent breaches of the Terms of Appointment;
  - (d) becoming a nuisance to other residents, staff, trustees and/or the charity; and/or
  - (e) the resident being found to have income / assets that were not disclosed at the time of their application to be a resident, which mean they were not eligible to be appointed as a resident.
- 11.5.2 Where possible trustees should view the setting aside of a resident's appointment as a last resort. Trustees should seek to resolve issues at an early stage so that residents can remain in the almshouse. It is helpful, should the decision to set aside an appointment be challenged at a later date, if the trustees can demonstrate that they took all reasonable steps to resolve the issue before they decided they had no option but to set aside the appointment.
- 11.5.3 In each case, before proceeding to consider setting aside an appointment the trustees should be satisfied that the particular circumstances are covered by an appropriate provision of the Governing Document ([see section 3.5](#)) and/or the Terms of Appointment. In addition, the charity should ensure that any internal policies or procedures have been followed (for example the charity's anti-social behaviour policy).
- 11.5.4 If the particular circumstances are not covered then it may not be possible to set aside the appointment and the trustees should consider taking legal advice on the appropriate way forward.
- 11.5.5 Trustees should not automatically assume that failure to pay WMC ([see section 9](#)) and/or behaviour that is considered unacceptable by the trustees are grounds to set aside an appointment, in the absence of an appropriate provision in the Governing Document ([see section 3.5](#)) and/or the terms of the resident's appointment.
- 11.5.6 If the resident is convicted of a crime this will not normally be sufficient, on its own, to justify setting aside the appointment. However, this may provide grounds for setting aside the appointment as a breach of the Governing Document ([see section 3.5](#)) and/or the Terms of Appointment if for example:
- (a) the resident no longer qualifies as a beneficiary if the conviction means they are considered not to be of good character and that was a relevant criterion ([see section 10.3](#));
  - (b) the resident's actions relate to an incident involving other residents and/or the almshouses, such that there is:
    - (i) a breach of the Governing Document ([see section 3.5](#)) and/or the terms of the resident's appointment; or
    - (ii) there is a potential serious danger to the safety or well-being of other residents or staff that puts the trustees in breach of their duty of care to other residents and/or staff;
  - (c) the resident's conviction results in a custodial sentence which results in an unauthorised absence of the resident from the almshouse for an extended period ([see section 10.24](#)), such that there is a breach of the Governing Document ([see section 3.5](#)) and/or the Terms of Appointment.

## **11.6 Local authority's duty to rehouse individuals**

- 11.6.1 The local authority has a duty to provide alternative accommodation for individuals who are at risk of becoming homeless or who have a priority need<sup>166</sup> provided they have not made themselves homeless intentionally:



- (a) in order for a person to be considered at risk of being homeless it needs to be likely that they will become homeless within 56 days<sup>167</sup>;
  - (b) the local authority has a statutory duty to provide information and advice to any individual in their district who is at risk of becoming homeless<sup>168</sup>; and
  - (c) individuals who are vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason are considered to have a priority need for accommodation<sup>169</sup>.
- 11.6.2 The local authority does not have any duty in relation to individuals who become homeless intentionally, which will occur if an individual *“deliberately does or fails to do anything in consequence of which (they cease) to occupy accommodation which is available or (their) occupation and which it would have been reasonable for (them) to continue to occupy”*<sup>170</sup>.
- 11.6.3 If a resident’s appointment is in jeopardy, the resident should be advised by the charity at an early opportunity to apply to the local authority for rehousing. Residents should be made aware that if the reason for their appointment being set aside is due to their own behaviour (i.e., a breach of the terms of the resident’s appointment) they risk being deemed to have made themselves homeless intentionally.

## **11.7 Setting Aside an Appointment – Step 1: Investigation**

- 11.7.1 When an issue first arises that might put a resident’s appointment in jeopardy, the trustees should inform the resident of the issue and carry out a proper and thorough investigation<sup>171</sup>.
- 11.7.2 If the trustees suspect that a crime has been committed then before carrying out any investigation the trustees should inform the police. The charity should not carry out any investigation that might prejudice the police’s investigation, until after consulting with the police. The charity should also consider making a serious incident report ([see section 7.19](#)).
- 11.7.3 The nature of the investigation will depend upon the circumstances, but the following general principles will apply:
- (a) the charity should delegate one or more trustees or members of staff, to carry out the investigation;
  - (b) the investigation should be carried out fairly, politely and without discrimination;
  - (c) the resident (and any other individuals spoken to as part of the investigation) should be told that any information they provide will be treated as confidential;
  - (d) the charity should only ask for personal information ([see section 15.2.4](#)) if that is relevant to the issue being investigated and this should not be disclosed to third parties without good reason and in accordance with any requirements relating to data protection that may be in force at the time;
  - (e) the investigation should never express opinions that cannot be substantiated or evidenced by facts;
  - (f) the investigation should seek to ascertain and verify all of the relevant facts and ensure that everyone involved (including the resident) has the opportunity to state their case;
  - (g) the steps carried out in the investigation and the information obtained should be recorded in writing; and
  - (h) those carrying out the investigation should act in good faith, responsibly and reasonably.
- 11.7.4 It is important the resident in question is given the opportunity to provide their version of events, either orally to those carrying out the investigation or in writing. It would be appropriate to advise the resident that they are welcome to be accompanied by their next of kin or family to the meeting. Any information that is given to the charity orally should, where possible, be recorded in writing contemporaneously or at the earliest opportunity.



- 11.7.5 The individuals who carry out the investigation should report their findings to the trustees either in writing, or at a properly convened trustees' meeting which is minuted. The trustees can then decide either to:
- (a) take no further action;
  - (b) issue a verbal warning;
  - (c) issue a written warning; or
  - (d) proceed to set aside the appointment.
- 11.7.6 Throughout the process the trustees should continue to explore all opportunities to reach a compromise and resolve any dispute, which might include considering taking part in a mediation.

**Further resources:**



- The Almshouse Association: [Mediation Service for Members](#)

## **11.8 Setting Aside an Appointment – Step 2: Verbal Warning**

- 11.8.1 If the issue relates to a breach by the resident of the Governing Document ([see section 3.5](#)) or the Terms of Appointment, then depending upon the seriousness of the issue, it is likely that as a first step it would be appropriate for the trustees to issue the resident with a verbal warning.
- 11.8.2 A verbal warning should be:
- (a) given by a trustee, in the presence of a witness (e.g., another trustee or member of staff);
  - (b) explain to the resident the breach of the Terms of Appointment;
  - (c) explain to the resident that if there is a further breach of the Governing Document ([see section 3.5](#)) or the Terms of Appointment, or the existing breach is not rectified, this may result in putting the resident's appointment in jeopardy.
- 11.8.3 The charity should record in writing the circumstances in which the verbal warning is given.
- 11.8.4 Whilst there is no limit on the number of times a verbal warning can be given, the charity should be aware that continued verbal warnings for the same issue might be treated as the charity waiving its right to take further action.
- 11.8.5 If the resident fails to comply with the verbal warning, then the trustees may:
- (a) issue a further verbal warning; or
  - (b) Issue a written warning.
- 11.8.6 The trustees should not proceed to set aside an appointment on the basis of a failure to comply with a verbal warning unless as part of the warning the resident was advised that their appointment was in jeopardy and that failure to comply would result in their appointment being set aside.

## **11.9 Setting Aside an Appointment – Step 3: Written Warning**

- 11.9.1 If the circumstances are serious, or the resident fails to comply with a verbal warning, then the trustees should issue the resident with a written warning.
- 11.9.2 The written warning should:
- (a) inform the resident of the grounds on which the resident is believed to be in breach of the Governing Document ([see section 3.5](#)) and/or the Terms of Appointment (including where appropriate referring to the specific paragraph of the Governing Document ([see section 3.5](#)) or the Terms of Appointment which is relevant);
  - (b) summarise:



- (i) the reasons why the resident is considered to be in breach;
    - (ii) the explanation, if any, that has been provided by the resident; and
    - (iii) why the trustees do not accept the explanation;
  - (c) advise the resident of what steps, if any, the resident is required to take to rectify the situation and, if appropriate, the date by which these steps must be carried out;
  - (d) advise the resident that their appointment is in jeopardy, should they fail to comply with the written warning; and
  - (e) if appropriate offer guidance on how to resolve the issue or signpost to appropriate guidance or third-party support services.
- 11.9.3 If the trustees only indicate that failure to comply with the written warning “may” or is “likely” to lead to the resident’s appointment being in jeopardy, then this contemplates that a failure to comply with the written warning will lead to a further interim step being taken before the trustees decide to set aside the appointment. It will then be necessary to give a further written warning if further issues arise. As explained in [section 11.9.2\(d\)](#) it is therefore better if the written warning makes it clear that the resident’s appointment is in jeopardy.
- 11.9.4 The charity should record in writing the means by which the written warning is provided to the resident (including the date and method of delivery).

#### **11.10 Setting Aside an Appointment – Step 4: Resolution of the trustees**

- 11.10.1 In some cases, there will be no option but to formally set aside the resident’s appointment.
- 11.10.2 In deciding whether or not to set aside an appointment, the trustees must<sup>172</sup>:
- (a) act in good faith, responsibly and reasonably; and
  - (b) inform themselves of all matters which are relevant to the decision (which may not be limited to the simple matters of fact prompting the decision but also investigation of the surrounding circumstances and the impact on the resident of the appointment being set aside).
- 11.10.3 The trustees should follow the Charity Commission’s guidance on decision making<sup>173</sup>. In particular, the trustees should:
- (a) consider the facts objectively and not be swayed by gossip or prejudice;
  - (b) review all documented evidence and details of the investigation carried out;
  - (c) ensure that all steps have been taken to try to resolve the matter amicably;
  - (d) consider the impact of the decision on the resident (including the availability of alternative accommodation) and, also, the impact on other residents if a decision is taken not to set aside the appointment; and
  - (e) consider the potential impact of the decision on the charity’s reputation.
- 11.10.4 The decision to set aside an appointment:
- (a) must be a quorate decision of the trustees;
  - (b) must be made by the trustees in accordance with any procedure set out in the Governing Document ([see section 3.5](#)) (which may require the decision to be made at a particular form of meeting (e.g. a “special meeting”), or at a meeting held on a certain period of notice); and
  - (c) must only be made if the trustees consider this the appropriate course of action based upon the information that has been provided to them in relation to the circumstances.
- 11.10.5 It is important that the trustees ensure that the grounds on which they are setting aside the appointment are the grounds which relate to the discussions that have taken place with the resident to date. For example, if the written warnings to the resident have previously related to failure to pay WMC ([see section 9](#)) the basis for setting aside the appointment cannot be anti-social behaviour.



- 11.10.6 The trustees' decision should be recorded in the minutes of the meeting, setting out in full the reasons for the decision. The minutes will, potentially, be disclosable in any subsequent court action and they should therefore not include any comments that might be considered defamatory or discriminatory and should simply record the factual basis for the trustees' decision.
- 11.10.7 If the Governing Document expressly requires that a decision to set aside an appointment must be made at a meeting (for example a special meeting), it may not be possible to make the decision by means of a written resolution outside of a trustees' meeting and if there is any doubt legal advice should be taken.
- 11.10.8 The resident must be notified of the decision to set aside the appointment and given notice of the date on which their appointment comes to an end. The resident should be notified in writing that their appointment has been set aside and the letter should be accompanied by a written notice to determine the appointment. It may be appropriate for the notice to be served personally on the resident, by attending at their almshouse, so that any immediate queries can be discussed with the resident and so that it is made clear they understand the gravity of the situation.
- 11.10.9 The Protection from Eviction Act 1977 provides that the owner of a property which is occupied by an individual as a dwelling under a licence, cannot simply take possession of the property and change the locks without obtaining a possession order from the court<sup>174</sup>. The legislation requires<sup>175</sup> that any notice to determine shall:
- (a) contain such information as may be prescribed<sup>176</sup> which requires that the notice states that:
    - (i) if the resident does not leave the dwelling, the trustees must get an order for possession from the court before the resident can lawfully be evicted and that the trustees cannot apply for such an order before the notice to determine has run out; and
    - (ii) if the resident does not know if they have any right to remain in possession after a notice to determine expires they can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. The resident should also be able to obtain information from Citizen's Advice, a Housing Aid Centre or a rent officer.
  - (b) give not less than 4 weeks' notice of the date on which it is to take effect.
- 11.10.10 The prescribed wording legislation as referred to in [section 11.10.9](#) is set out in The Almshouse Association's model Notice to Determine. The wording refers to both "tenant" / "licensee" and "landlord" / "licensor". Whilst the references to "tenant" and "landlord" are misleading in the context of an almshouse where the resident occupies under licence, they are part of the prescribed wording and must be included in the notice for it to be valid.
- 11.10.11 The charity should not accept any WMC (see [section 9](#)) from the resident after the date on which the appointment comes to an end. If the resident is paying by standing order or direct debit, arrangements should be made for the standing order or direct debit to be terminated. If the resident is in receipt of housing benefit and/or local housing allowance which is paid direct to the charity, the charity should inform the Local Authority that no further payments are to be made.
- 11.10.12 If appropriate the charity should:
- (a) offer to assist the resident with advice and reasonable assistance in finding alternative accommodation – although the charity should be careful to avoid giving the impression that this is the charity's responsibility and/or that the resident can stay in the almshouse until alternative accommodation can be found;
  - (b) inform the resident's next of kin (if permission has been given to the charity to communicate with the next of kin);
  - (c) inform the resident's GP (if permission has been given to the charity to communicate with the GP);
  - (d) notify social services, if they will be required to take steps to assist with providing alternative accommodation for the individual; and
  - (e) advise the resident that they are entitled to seek advice from a solicitor, local authority housing advice centre of Citizens Advice.

**Further Resources:**

- [Protection from Eviction Act 1977](#)
- Charity Commission guidance: [Decision-making for charity trustees \(CC27\)](#)
- Citizens Advice – [Eviction for rent arrears](#)
- The Almshouse Association website: see **Model Notice to Determine** in [Model Policies and Templates](#)
- The Almshouse Association website: see **Model Notice to Set Aside** in [Model Policies and Templates](#)
- The Almshouse Association website: see **Model Trustee Resolution Set Aside** in [Model Policies and Templates](#)
- [Citizens Advice – find your nearest Citizens Advice](#)
- [Homeless England – Search homelessness services in England](#)

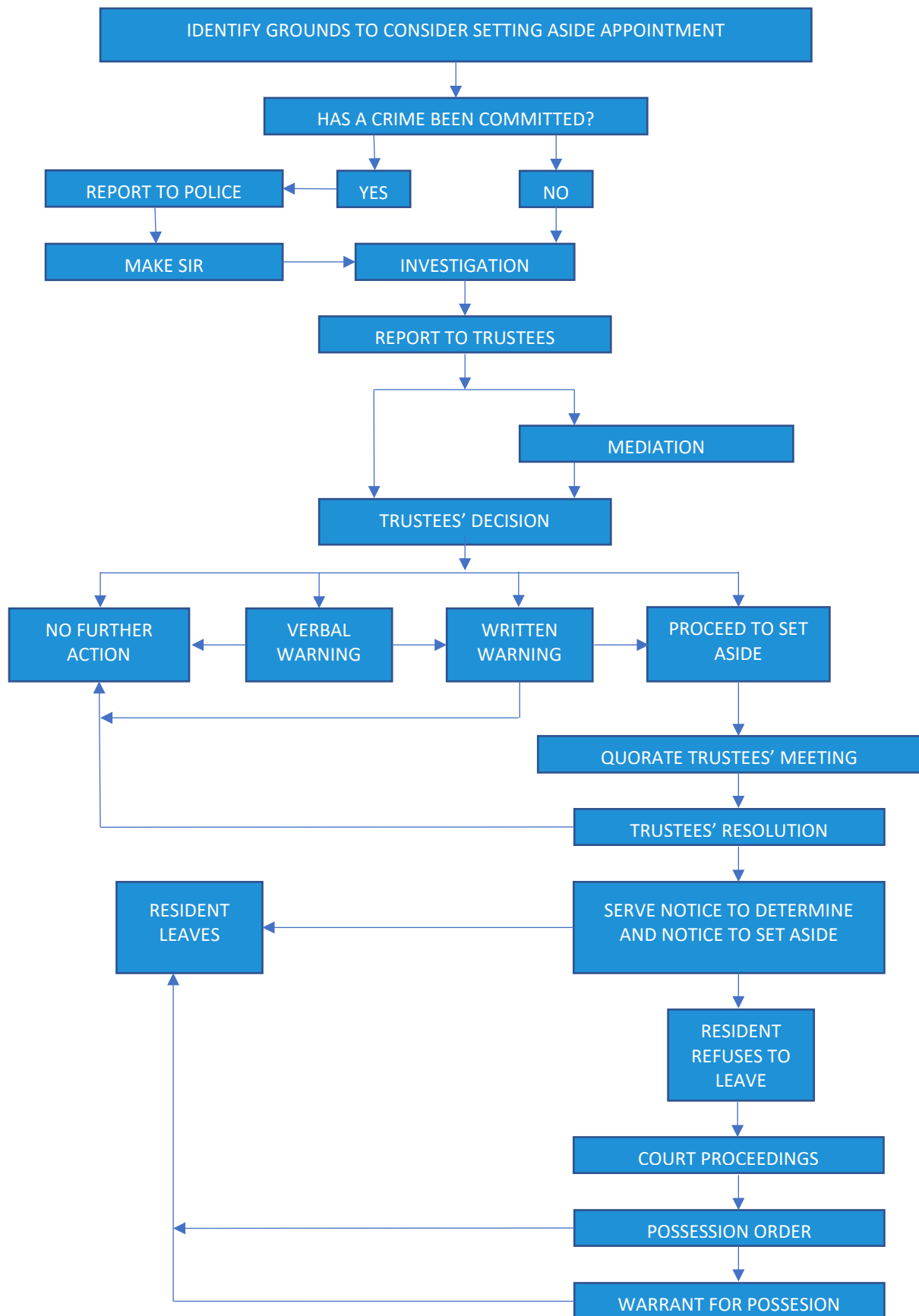
**11.11 Setting Aside the Appointment – Step 5: Applying to court**

- 11.11.1 If the resident does not leave the almshouse voluntarily at the end of the notice period, the charity will need to apply to the court for a possession order<sup>177</sup>. It is recommended that the charity takes legal advice at this point if advice has not already been taken.
- 11.11.2 The application for possession must be based upon the grounds for setting aside the appointment that have featured in the previous correspondence / warnings. If the charity introduces new grounds to justify the decision, at this stage, the application to court may fail. If new grounds come to light, during the process that justify the appointment being set aside, proper warnings should be given in relation to these new grounds following the process set out above before any steps are taken to apply to court.
- 11.11.3 Applying to court can be time consuming, stressful and costly. It also has a potential reputational impact for the charity. Throughout the process the trustees should continue to evaluate whether court action is appropriate (or could be avoided) and seek to resolve matters amicably with the resident if possible through mediation or other forms of alternative dispute resolution.
- 11.11.4 It is recommended that the charity appoints a solicitor to deal with the possession proceedings on its behalf.
- 11.11.5 It will be necessary to provide detailed supporting evidence (in the form of witness statements and documentary evidence) which should have been gathered during the earlier stages of the process.
- 11.11.6 If the charity is not successful in obtaining a possession order, it is likely to have to pay the resident's legal costs of defending the proceedings.
- 11.11.7 If the charity obtains a possession order and the resident fails to leave on or before the date given for possession, the charity will need to make a further application to the court for a warrant of possession. Once the warrant has been issued, a county court bailiff will take steps to enforce the warrant and carry out the eviction. The resident can apply to the court to suspend the warrant, and this may further delay proceedings.
- 11.11.8 Once the resident has vacated the almshouse the charity should take the same steps as are taken on a voluntary departure of a resident ([see section 10.23](#)).

**Further resources:**

- The Almshouse Association: [Panel of Consultants](#)
- [Understanding the possession action process: a guide for private landlords in England and Wales](#)

### Process to set aside an appointment







## CHECKLIST – SETTING ASIDE AN APPOINTMENT

### Initial Steps:

- ☒ Does the charity have a signed copy of the resident's terms of appointment (i.e., the Letter of Appointment and Residents' Handbook)?
- ☒ Do the terms of the resident's appointment make clear the specific circumstances in which a resident's appointment may be set aside and are these consistent with the provisions of the charity's Governing Document?
- ☒ Has the charity identified the specific ground on which the resident's appointment will be set aside?
- ☒ Has the charity considered taking legal advice?
- ☒ If the appointment is being set aside on the basis that the resident can no longer live independently, has the charity carried out a consultation with the resident, their family, their GP and/or social services (as appropriate)?
- ☒ Has the charity taken reasonable steps to resolve the issue with the resident and has any attempt been made to go to mediation?
- ☒ Has the charity informed the resident that they should consider applying to the local authority for rehousing?
- ☒ Has the charity carried out a full and thorough investigation, and put together comprehensive documentary evidence to record the investigation process and its outcome?
- ☒ If a crime has been committed has this been reported to the police and has the charity made a serious incident report?
- ☒ Has a written record been kept of the circumstances of any verbal warnings?
- ☒ If a written warning has been given, has it been made clear in the written warning that failure to comply with the warning will put the resident's appointment in jeopardy?

### Decision to set aside:

- ☒ Was the decision to set aside the appointment made by the trustees at a properly convened trustees' meeting that was both quorate and carried out in accordance with the terms of the charity's Governing Document)?
- ☒ Has the resident been given a formal notice to determine (that follows the prescribed wording) and a formal notice to set aside?
- ☒ Has the charity taken steps to stop the automatic collection of WMC ([see section 9](#)) and/or housing benefit?

### Applying to court:

- ☒ Has the charity appointed a solicitor to issue the possession proceedings?
- ☒ Has the charity considered how to handle the reputational issues associated with commencing possession proceedings?



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**References:**

- 164 **Gray v. Taylor [1998] 1 WLR 1093 and Watts v. Trustees of the Ashted United Charity and others [2016] EWCA Civ 1247.**
- 165 *If the charity provides extra-care services then this is not likely to apply.*
- 166 *Part VII of the Housing Act 1996.*
- 167 *Section 175(4) of the Housing Act 1996.*
- 168 *Section 179(1) of the Housing Act 1996.*
- 169 *Section 189(1)(c) of the Housing Act 1996.*
- 170 *Section 191 of the Housing Act 1996.*
- 171 **R v. Charity Commissioners for England and Wales, ex parte Baldwin (2000) 33 HLR 538.**
- 172 **R v. Charity Commissioners for England and Wales, ex parte Baldwin (2000) 33 HLR 538.**
- 173 <https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making/its-your-decision-charity-trustees-and-decision-making>.
- 174 *Section 3(2B) of the Protection from Eviction Act 1977.*
- 175 *Section 5(1A) of the Protection from Eviction Act 1977.*
- 176 *The Notices to Quit etc. (Prescribed Information) Regulations 1988.*
- 177 *Part 55 of the Civil Procedure Rules.*



## 12 LAND

### 12.1 Introduction

12.1.1 A charity will hold land for one of three purposes:

- (a) to provide almshouses;
- (b) to use for operational purposes (e.g., the provision of offices for employees); or
- (c) as an investment.

12.1.2 It is important to understand the basis on which the charity holds a particular piece of land, as that will determine what the charity can and cannot do with the land.

### 12.2 Ownership and Title Deeds

12.2.1 How ownership of land is demonstrated will depend upon whether the title to the land is:

- (a) Registered: in which case the details of the land and its ownership will be recorded at the Land Registry; or
- (b) Unregistered: in which case the details of the land and its ownership will need to be evidenced by the production of the original deeds detailing the history of the ownership of the land along with the documents evidencing any changes of trusteeship over the years.

12.2.2 All charities are encouraged to have the title to their land registered at the Land Registry as this:

- (a) ensures proof of title for the future;
- (b) makes it more difficult for third parties to fraudulently claim ownership to the land; and
- (c) confirms ownership to third parties (e.g., banks).

12.2.3 If the charity's land is not already registered:

- (a) the trustees should consider whether it is appropriate to register the land now and would be advised to seek professional assistance if they decide to proceed with registration;
- (b) the trustees have a duty to ensure that they know where the title deeds recording ownership of the land are located and that they are stored safely to prevent their loss or destruction as these determine the ownership of the land; often documents can be stored with the charity's solicitors or bank for safe keeping; and
- (c) the trustees should ensure that they have all the documentation necessary to prove the chain of ownership of the land, in particular evidence of changes in trusteeship ([see section 12.2.4\(a\)](#)).

12.2.4 Whilst the charity should always be the beneficial owners of the land, the legal owner of the land will depend upon how the charity is constituted and the arrangements in place regarding ownership. Charities that are unincorporated ([see section 3.4](#)) do not have any legal identity and cannot therefore hold land in their own name. An unincorporated charity will therefore hold land in one of the following ways:

- (a) It may hold land in the individual names of all of the current trustees<sup>178</sup>. When there are any changes in the identity of the trustees (e.g. due to retirement, death, resignation, removal etc.) the ownership will change and it will be necessary for the change of trusteeship to be recorded either by a deed of appointment and/or retirement<sup>179</sup> or, if the Governing Document ([see section 3.5](#)) permits by a memorandum executed as a deed<sup>180</sup>, which in either case will have the effect of vesting the ownership of the land in the new group of trustees. In either case, if the land is not already registered at the Land Registry this will trigger the requirement for compulsory first registration<sup>181</sup>.
- (b) It may hold land in the names of a group of individuals who may be referred to as the "holding trustees" or "custodian trustees" or "nominees", who hold the legal title to the land on behalf of the trustees of the charity, who have the beneficial interest. The advantage of this type of

arrangement is that the individuals may continue to hold the land, notwithstanding changes in the charity's trustee body, so there is no requirement to update ownership as and when the trustees change. In some cases, the holding trustees may be a corporate body such as the local authority or local parish council. It should be noted that:

- (i) a charity may only use holding trustees in this way if the trustees have an appropriate power in the Governing Document;
  - (ii) the holding trustees must act on the directions of the trustees and do not have any power to determine how the land is used (subject to any powers given to them on their appointment);
  - (iii) the arrangement should be recorded in a declaration of trust confirming that the holding trustees hold the land on trust for the benefit of the trustees of the charity<sup>182</sup>; and
  - (iv) any change in the holding trustees will need to be recorded by a deed of appointment and/or retirement which will have the effect of vesting ownership of the land in the new group of trustees. In either case, if the land is not already registered at the Land Registry this will trigger the requirement for compulsory first registration<sup>183</sup>. The trustees should ensure that changes in the holding trustees are made as and when appropriate (for example if an individual should die or move away from the area).
- (c) It may hold the land in the name of the trustees as a corporate body in which case there is no need to change the ownership of the land as and when individual trustees change. A charity's trustees may act as a corporate body if either:
- (i) the Governing Document provides for the trustees to be a body corporate; or
  - (ii) the trustees have been granted a certificate of incorporation to act as a body corporate by the Charity Commission<sup>184</sup>.
- (d) It may hold the land in the name of the Official Custodian for Charities<sup>185</sup>. The Official Custodian is a corporation created by statute to hold land on behalf of charities. If a charity vests its land in the Official Custodian there is then no need for there to be any change in ownership as and when individual trustees change. Ownership of a charity's land can be vested in the Official Custodian either by an order of the court or, more usually, by an order of the Charity Commission<sup>186</sup>. If land is vested in the Official Custodian the charity can apply to the Land Registry for the ownership of the land to be registered in the Official Custodian's name.
- (e) If the charity has a corporate trustee ([see section 3.4](#)) then provided the corporate trustee has trust corporation status the land can be vested in the ownership of the corporate trustee. The corporate trustee will have trust corporation status if it has either been granted such status by the Ministry of Justice or, in relation to the particular trust, was appointed as the trustee of the trusts by the Charity Commission<sup>187</sup>.
- 12.2.5 If the charity is incorporated ([see section 3.3](#)) then the land should be registered in the name of the charity.

#### Further resources:



- [The Official Custodian for Charities' "land holding" service.](#)
- Charity Commission guidance: [Transfer charity land or property to the Official Custodian](#)
- Land Registry Practice Guide: [Practice Guide 1: First Registrations.](#)
- Land Registry: [Search by postcode.](#)
- [Charity Commission operational guidance](#)



## 12.3 Types of land

- 12.3.1 The charity will hold land either to further its charitable purposes (referred to as “specie” or “functional land”) or as an investment to generate income to carry out its charitable activities.
- 12.3.2 In either case the land may, or may not, form part of the charity’s permanent endowment ([see section 2.3](#)).
- 12.3.3 Permanent endowment means any land, investment or other capital asset which the trustees cannot “spend” because of either a restriction in the Governing Document, or a restriction imposed on the document under which the asset was conveyed to the charity (e.g., a will, conveyance, deed of gift or declaration of trust). The income generated from the assets can be applied for charitable purposes, but the actual capital cannot be used in this way.
- 12.3.4 If land is held as permanent endowment it will be treated either as:
- (a) functional permanent endowment – which is land that the charity is required to retain in perpetuity to be used for particular purposes; or
  - (b) investment permanent endowment – which is land that the charity holds as an investment to produce an income.
- 12.3.5 In most cases almshouses will be held as functional permanent endowment. The charity will have acquired the land used for the almshouses to be held in perpetuity for the particular purposes of providing accommodation to beneficiaries of the trusts of the charity ([see section 2.3](#)).
- 12.3.6 If land is held as permanent endowment it affects the trustees’ ability to dispose of the land ([see section 12.5.4](#)) and the trustees therefore need to understand to what extent land held by the charity is permanent endowment. If the trustees have any doubt they should seek professional legal advice.
- 12.3.7 An incorporated charity cannot hold permanent endowment land as part of the corporate assets of the charity will always hold it as trustee on separate trusts.
- (a) In most cases the separate trusts will be set out in a separate constitutional document.
  - (b) If the land has been acquired by a charity constituted as a company as part of an incorporation exercise, the trusts are likely to be registered as a linked charity to the main charity.
  - (c) If the land has been acquired by a charity constituted as a CIO as part of an incorporation exercise, the trusts are likely to be treated as one entity for registration, reporting and accounting purposes<sup>188</sup>, but the land must still be treated as being held on separate trusts for all practical purposes.

## 12.4 Acquiring land

- 12.4.1 A charity needs the power to acquire land (i.e., to purchase land or lease land).
- (a) In most cases there will be an express power in the Governing Document of an incorporated charity and a CIO has a statutory power<sup>189</sup>.
  - (b) If there is no express power in the Governing Document:
    - (i) In the case of an unincorporated charity the trustees have a statutory power<sup>190</sup>. The statutory power will also apply to an incorporated charity that is acquiring land to be held by it as a trustee on trust.
    - (ii) In the case of an incorporated charity, it would be necessary for the Governing Document to be amended ([see section 3.6.3](#)) to insert the necessary power.
- 12.4.2 Before acquiring any interest in land, the trustees should ensure that they have taken reasonable steps to check that the land is suitable for the charity’s needs and that it is worth the amount that the charity is paying to acquire the land.
- 12.4.3 If the charity is seeking to acquire land using a mortgage then the trustees need to:
- (a) check that the charity has the power to borrow; and

- (b) comply with the provisions set out in section 124 Charities Act 2011.

#### Further resources:



- Charity Commission guidance: [Acquiring Land \(CC33\)](#)

## 12.5 Disposing of land

- 12.5.1 A disposal of land includes the sale, leasing, mortgage ([see section 8.13](#)) or granting of any interest in the land (e.g., granting of an easement or any form of tenancy etc.).
- 12.5.2 A charity needs the power to dispose of land.
- (a) In most cases there will be an express power in the Governing Document of an incorporated charity and a CIO has a statutory power<sup>191</sup>.
- (b) If there is no express power in the Governing Document:
- (i) In the case of an unincorporated charity the trustees have a statutory power<sup>192</sup>. The statutory power will also apply to an incorporated charity that is disposing of land it holds as trustee.
- (ii) In the case of an incorporated charity, it would be necessary for the Governing Document to be amended ([see section 3.6.3](#)) to insert the necessary power.
- 12.5.3 If the Governing Document states that land may only be disposed of with the consent of the Charity Commission, provided the trustees comply with the provisions of Part 7 of the Charities Act 2011, the trustees can proceed without the consent of the Charity Commission.
- 12.5.4 If the land is held as permanent endowment then:
- (a) If this is functional permanent endowment (e.g., the almshouses) then:
- (i) Unless there is an express power of sale in the Governing Document relating to the permanent endowment land, the trustees can only rely on the statutory power of sale<sup>193</sup> to sell or dispose of the land for the purposes of acquiring replacement land to be held for the same purposes (which must be at least as suitable for the charity's operational needs as the land being disposed of). For example, almshouses held as permanent endowment could be sold if the sale proceeds are used, in full, to provide for replacement almshouses which, in turn, would then be held as permanent endowment. If it is not intended to replace the land being sold or disposed of, then the statutory power cannot be used because this would breach the trusts on which the land is held. In such circumstances it would be necessary to obtain a Scheme from the Charity Commission to permit the disposal of the land which would also direct how the sale proceeds were to be applied. Specialist advice should be taken before disposing of any interest in functional permanent endowment. It is not possible to sell part of the property with a view to using the proceeds to develop / refurbish the remaining buildings as this would be treated as an expenditure of the capital and require Charity Commission consent.
- (ii) Unless there is an express power in the Governing Document, it will not be possible to grant a lease or tenancy or mortgage over the functional permanent endowment as this will be inconsistent with the trusts on which the land is held. For example, it is not possible to grant a secure tenancy over an almshouse property that is held as permanent endowment for the purpose of providing almshouses. The fact that the lessor may use the land for the provision of social housing (i.e., in furtherance of the charity's objects ([see section 3.5.5](#))) is not sufficient to permit the lease or tenancy or mortgage in the absence of an express power.



- (b) If this is held as investment permanent endowment then, provided the proceeds of sale are to be invested in replacement investments that will generate a similar or better return (either land or other assets), the trustees can use the statutory power. However, if the intention is to spend the proceeds of sale (i.e., by using applying the proceeds to further the charity's purposes rather than purchasing alternative investments), the charity would need a Scheme from the Charity Commission to enable it to spend the permanent endowment.
- 12.5.5 If disposing of land, the trustees must comply with Part 7 of the Charities Act 2011. This requires the trustees, before disposing of the land, to:
- (a) obtain a properly compliant written report from a qualified surveyor acting on behalf of the charity<sup>194</sup>;
- (b) advertise the property in accordance with the surveyor's advice, unless the surveyor advising that advertising is not necessary; and
- (c) decide, based upon the surveyor's report, that the terms of the proposed disposal are the best terms reasonably obtainable by the charity.
- 12.5.6 The requirements in [section 12.5.5](#) do not apply to some dispositions between charities and/or beneficiaries of charities (if the disposition furthers the charitable purposes of the charity).
- 12.5.7 If the land is to be sold to a "connected person"<sup>195</sup> (e.g., a trustee, or a family member of a trustee, or other close relation or business partner) Charity Commission consent will be required. The definition of connected person would include any officer, agent or employee of the charity and a trading subsidiary established by the charity.
- 12.5.8 If the land is functional permanent endowment that is being disposed of in order to fund the provision of replacement functional permanent endowment land the trustees must also give public notice of the disposal and consider any representations made in response to the notice<sup>196</sup>.
- 12.5.9 If the land is held by an incorporated charity as functional permanent endowment on separate trusts, it is the charity, as trustee, that will make any decision about the land not the trustees of the charity. Any conflicts of interest between the charity's own interests and the interests of the charitable trust which the charity is acting as a trustee of will need to be managed.

#### Further resources:



- Charity Commission Operational Guidance: [OG 548 Disposing of Charity Land](#)
- Charity Commission guidance: [Sales leases transfer or mortgages what trustees need to know about disposing of charity land \(CC28\)](#)

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### CHECKLIST – LAND

- ☒ Is title to all of the charity's properties registered at the Land Registry?
- ☒ Is the title registered in the names of the current trustees or a holding / custodian trustee?
- ☒ Does the charity have the title deeds for any properties that are not registered at the Land Registry?
- ☒ Do the trustees know what properties are held as permanent endowment?
- ☒ Do the trustees know which properties are functional permanent endowment and which properties are investment permanent endowment?
- ☒ Do the trustees know the terms of the trusts on which the functional permanent endowment properties are held?
- ☒ Does the charity have the power to acquire land?
- ☒ Does the charity have the power to dispose of land?
- ☒ Does the charity follow the provisions of Part 7 of the Charities Act 2011 when disposing of land?



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**References:**

- 178 Section 34(3)(a) Trustee Act 1925 provides that a charitable trust of land may have more than four trustees  
179 notwithstanding the provisions of Section 34(2) of the Law of Property Act 1925.
- 180 Section 40(1)(b) Trustee Act 1925 or, if the change of appointment is  
181 Section 334 Charities Act 2011.
- 182 Section 4 of the Land Registration Act 2002.
- 183 A trust arrangement of this nature is a “bare trust” and should be registered with the Trust Registration  
184 Service in accordance with Schedule 3A(5) of the Money Laundering, Terrorist Financing and Transfer of  
185 Funds (Information on the Payer) Regulations 2017.
- 186 Section 4 Land Registration Act 2002.
- 187 Part 12 Charities Act 2011.
- 188 <https://www.gov.uk/government/publications/the-official-custodian-for-charities-land-holding-service-cc13/the-official-custodian-for-charities-land-holding-service>.
- 189 If the land was vested prior to 1 January 1961 it would have been vested in the name of the Official Trustee  
190 for Charity Lands. Any such land vested automatically in the Official Custodian for Charities on 1 January  
191 1961.
- 192 Section 3(1) of Schedule 7 of the Charities Act 2011.
- 193 Regulation 61(2) The Charitable Incorporated Organisations (General) Regulations 2012.
- 194 Section 216 Charities Act 2011.
- 195 Section 8 Trustee Act 2000.
- 196 Section 216 Charities Act 2011.
- Section 8 Trustee Act 2000 and section 6 Trusts of Land and Appointment of Trustees Act 1996.
- Section 6 Trusts of Land and Appointment of Trustees Act 1996.
- The Charities (Qualified Surveyors’ Reports) Regulations 1992.
- As defined in section 118 Charities Act 2011.
- Section 121 Charities Act 2011.



## 13 REGISTERED PROVIDERS OF SOCIAL HOUSING

### 13.1 Introduction

- 13.1.1 A number of charities are registered with the Regulator of Social Housing<sup>197</sup> as Registered Providers of Social Housing.
- 13.1.2 The Regulator of Social Housing is a form of Government regulation established in order to maintain standards of housing provision for large housing associations.
- 13.1.3 In many cases charities were registered in the past in order to apply for social housing grant.
- 13.1.4 Throughout this publication where additional obligations are relevant to Registered Providers of Social Housing; these have been highlighted in purple text.
- 13.1.5 Some charities may not realise that they are registered with the Regulator of Social Housing, in particular if the purpose of the registration was to obtain social housing grant many years ago. If the charity has obtained social housing grant in the past the trustees should check whether or not the charity is still registered.

#### Further resources:



- Government guidance: [Regulation of social housing: detailed information](#)
- Regulator of Social Housing: [Registered providers of social housing – updated monthly](#)
- The Almshouse Association website: [see Registered Providers page](#)

### 13.2 Regulatory Framework

- 13.2.1 The Regulator of Social Housing has two main objectives:
  - (a) Economic objective: to make sure that Registered Providers of Social Housing are well management and financially stable; and
  - (b) Consumer objective: to make sure that residents get quality accommodation, have choice and protection and can hold the charity to account.
- 13.2.2 In order to ensure that the objectives are met, the Regulator of Social Housing has issued a set of regulatory standards which charities, who are registered, must comply with. The standards are:
  - (a) Economic standards:
    - (i) Governance and Financial Viability Standard;
    - (ii) Value for Money Standard; and
    - (iii) Rent Standard.
  - (b) Consumer standards:
    - (i) Home Standard;
    - (ii) Tenancy Standard;
    - (iii) Neighbourhood and Community Standard; and
    - (iv) Tenant Involvement and Empowerment Standard.
- 13.2.3 A charity that is a Registered Provider of Social Housing should be familiar with and complying with these standards. The regulatory framework is designed to regulate those housing providers who have over 1,000 units of housing. Those charities that have registered are normally recognised by the Regulator of Social Housing as being “Smaller Housing Providers” but they are still required to comply with the standards in the same way as larger providers.

- 13.2.4 The standards are drafted on the basis that the occupants of the social housing will be paying rent, this is not the case with the charity's residents ([see section 9](#)) who will pay a Weekly Maintenance Contribution. The charity should therefore substitute "resident" for "tenant" and "WMC" for "rent" when considering and applying the standards.
- 13.2.5 Some sections of the standards will not be easy to apply in the context of an almshouse (e.g., residents swapping tenancies etc.) so the charity will need to consider the extent to which it can comply with the standards.

#### Further resources:



- Regulator of Social Housing: [Regulatory standards](#)

### 13.3 Additional sections of this publication that apply to Registered Providers of Social Housing

- 13.3.1 When changing or amending the Governing Document it will be necessary to involve the Regulator of Social Housing ([see section 3.6.2](#))<sup>198</sup>.
- 13.3.2 If the charity is restructured as an incorporated charity it will be necessary to notify the Regulator of Social Housing and register the new entity ([see section 3.7.1\(d\)](#)).
- 13.3.3 The legislation strictly prohibits payments to "members" of a Registered Provider of Social Housing which may affect a charity if it is structured as either a company limited by guarantee or a CIO ([see section 4.7](#) and [section 8.2.7](#))<sup>199</sup>.
- 13.3.4 The charity will have to comply with the Rent Policy ([see section 9.6](#)).
- 13.3.5 The charity will need to ensure that the almshouses meet the Decent Homes Standard ([see section 16.2.7](#)).

### 13.5 Data Collection

- 13.5.1 It is a regulatory requirement that Registered Providers make submissions of data to the Regulator. NROSH+, a 'one-stop-shop' is the data collection system and website through which the Regulator collects the regulatory data from Registered Providers for the following returns:
- (a) Statistical Data Return (SDR)
  - (b) Electronic Annual Accounts (EVA)
  - (c) Financial Forecast Return (FFR)
  - (d) Quarterly Survey (regulatory, risk and financial data) (QS)
  - (e) Fire Safety Remediation Survey (FRS)

### 13.6 De-registration

- 13.6.1 As explained above, charities that are registered with the Regulator of Social Housing are required to comply with many standards that may not be appropriate in the context of an almshouse. For that reason, some charities who have been registered in the past, have sought to de-register.
- 13.6.2 There is a formal process to follow in order to de-register and, as part of the process, the charity will need to demonstrate that:
- (a) satisfactory arrangements are in place for the continued protection of residents; and
  - (b) satisfactory arrangements are in place to ensure there is no misuse of public funds.
- 13.6.3 A consequence of de-registration is that it acts as a trigger to repay any social housing grant that has been obtained in the past. In most cases the charity should be able to persuade Homes England to defer repayment of the grant, and put in place a registered charge over the almshouses providing for the



grant to repaid in the event that there is any disposal of the almshouses in the future. However, there is no guarantee that this will be possible.

- 13.6.4 The Almshouse Association provides a de-registration tool kit to assist charities considering de-registering.

**Further resources:**



- The Almshouse Association website : see **Deregistration as a Registered Provider** in [Model Policies and Templates](#)
- Homes & Communities Agency: [Guidance on applying for voluntary de-registration as a provider of social housing](#)
- [NROSH](#)

**CHECKLIST – REGISTERED PROVIDERS OF SOCIAL HOUSING**

- ☒ Is the charity a Registered Provider of Social Housing?
- ☒ Are the trustees aware of the Economic standards and the Consumer standards, and is the charity complying with them?
- ☒ Is the WMC set in accordance with the Rent Policy?
- ☒ Do all of the almshouses meet the Decent Homes Standard?
- ☒ Has the charity previously received social housing grant and, if so, has the charity retained appropriate records documenting the terms of the grant?
- ☒ Has the charity previously de-registered and, if so, are the trustees aware of the on-going obligations on the charity?

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**References:**

- <sup>197</sup> *Part 2 of the Housing and Regeneration Act 2008.*  
<sup>198</sup> *Sections 159A to 169D of the Housing and Regeneration Act 2008.*  
<sup>199</sup> *Section 122 of the Housing and Regeneration Act 2008.*



## 14 EXTRA CARE

### 14.1 Introduction

- 14.1.1 Charities have traditionally provided almshouses for people who are capable of independent living ([see section 10.11](#)).
- 14.1.2 Whilst it is accepted that residents may be people in need by reason of age or some disability, it is a fundamental principle that they should be able to live independently (as opposed to being a danger to themselves or others).
- 14.1.3 Whilst Government policy is aimed at encouraging providers of housing to enable individuals to live at home for as long as possible and even for them to expect to end their days in their own homes (e.g., “Homes for Life”), such an approach is not always appropriate in an almshouse context.

#### Further resources:



- The Almshouse Association website : see **Guidance on Independent Living** in [Model Policies and Templates](#)

### 14.2 Purposes of the charity

- 14.2.1 The purposes of the charity ([see section 2.2.4](#)) are, in most cases, limited to the provision of accommodation for residents and, in some cases, the provision of financial support for residents.
- 14.2.2 If the charity seeks to introduce services for residents that go beyond the purposes of the charity, the trustees must first be satisfied that those services can be provided without acting in breach of trust.
- 14.2.3 The Charity Commission’s view is that the provision of residential accommodation with meals, nursing and other personal services for residents who may be infirm, sick or disabled (and therefore no longer able to look after themselves) would be outside of the scope of the purposes usually found in a charity that provides almshouses.
- 14.2.4 The Charity Commission does, however, accept that to a limited extent a charity that provides almshouses may be able to provide support to residents that enables them to continue to live independently, examples of which may include:
  - (a) buying in support packages to provide assistance for a resident;
  - (b) the provision of a mid-day meal;
  - (c) the provision of a room for a GP, chiropodist, hairdresser or similar service can be provided; and
  - (d) the provision on an on-site Warden.
- 14.2.5 If additional services, within the scope of the purposes of the charity, are provided, the trustees should ensure that this is properly reflected in the level of WMC charged to the residents ([see section 9.2](#)).
- 14.2.6 If the services constitute “extra care”, then in the absence of authorisation in the charity’s Governing Document ([see section 3.5](#)), the Charity Commission’s view is that the provision of such services would not be permitted. If the charity wished to offer such services it would need to take appropriate steps to amend its Governing Document ([see section 3.6.3](#)).



### 14.3 Registration under the Health and Social Care Act 2008

- 14.3.1 If the charity intends to provide additional services to residents, it will need to consider whether it needs to be registered with the Care Quality Commission (CQC) or the Care Inspectorate Wales (CIW).
- 14.3.2 The charity will need to register with CQC if it provides, or intends to provide, regulated health or adult social care activities in England<sup>200</sup>. Similar legislation applies in Wales.
- 14.3.3 In England, the regulated activities<sup>201</sup> include (but this is not exhaustive):
- (a) The provision of personal care for individuals who, by reason of old age, illness or disability are unable to provide it for themselves, and which is provided in a place where the individual is living at the time that the care is provided.
  - (b) The provision of residential accommodation together with nursing or personal care.
  - (c) Nursing care (but excluding where this is merely the introduction of a nurse and the charity has no ongoing role in the direction or control of the service provided to the resident).
- 14.3.4 In England, if the resident makes their own arrangements for personal care and/or nursing care and they directly employ the care worker or nurse, then there is no requirement for the charity to register. However, if nursing or personal care is being provided on an overnight basis this may bring the activity within the scope for registration (by the individual providing the care).
- 14.3.5 If the charity is required to register, but fails to register, then the provision of regulated care activities is a criminal offence.
- 14.3.6 The trustees therefore need to be careful to ensure that any support provided to residents (either as a gesture of goodwill or as part of a planned arrangement) does not go beyond being a “good neighbour” and fall into the remit of regulated activity.
- 14.3.7 If the charity is registered with CQC or CIW, the trustees should still treat the resident as a beneficiary of the charity and the resident does not acquire any greater rights of occupation in the almshouse simply by being the recipient of “extra care” services.

#### Further resources:



- Care Quality Commission guidance: [Scope of registration](#)

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### CHECKLIST – EXTRA CARE

- ☒ Do the charity’s purposes permit the charity to provide “extra care” services to residents?
- ☒ Does the charity provide any enhanced services to residents and, if so, is the cost of this covered by the WMC?
- ☒ If the charity is permitted to provide “extra care” services, do the activities carried out by the charity require to be registered with the CQC or CIW?

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#### References:

<sup>200</sup> Registration is required under the Health and Social Care Act 2008.

<sup>201</sup> The activities are listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.



## 15 DATA PROTECTION

### 15.1 Introduction

- 15.1.1 All charities have to be aware of their obligations in relation to the holding and use of data relating to residents, applicants to become residents, staff, volunteers, trustees, and other members of the public who engage with the charity.
- 15.1.2 The key pieces of legislation on data protection are The Data Protection Act 2018 (**DPA 2018**) and the UK General Data Protection Regulation (**UK GDPR**).
- 15.1.3 To the extent the charity carries out digital direct marketing, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (**PECR**) is also relevant.

### 15.2 Key definitions

- 15.2.1 The UK GDPR applies to “controllers” and “processors”.
- 15.2.2 A **CONTROLLER** determines the purposes and means of processing personal data (see section 15.2.4) therefore, all charities will be controllers for the purposes of UK GDPR.
- 15.2.3 A **PROCESSOR** is responsible for processing personal data (see section 15.2.4) on behalf of a controller. The charity may be a processor for another organisation (e.g., another charity) but will often have its own processors in any event (e.g., an IT service provider).
- 15.2.4 UK GDPR will apply to the charity if it is processing **PERSONAL DATA**. Personal data is information that relates to a living individual who can be identified or is identifiable (**personal data**).
- 15.2.5 It is important to understand the distinction between:
  - (a) personal data;
  - (b) special category data – personal data that needs more protection because it is sensitive (i.e., it relates to racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, health, a person’s sex life or a person’s sexual orientation); and
  - (c) criminal offence data – personal data relating to criminal convictions and offences or related security measures.

#### Further resources:



- ICO guidance: [Controllers and Processors](#)
- ICO guidance: [Personal data](#)
- ICO guidance: [Special category data](#)
- ICO guidance: [Criminal Office data](#)

### 15.3 Approach to data protection

- 15.3.1 The charity needs to understand both its obligations under data protection law as a controller of personal data, but also any flows of personal data between the charity and other separate legal entities such as processors, independent controllers, or joint controllers. Understanding those relationships is vital because, in most cases, UK GDPR imposes specific obligations on a charity in the context of those relationships.
- 15.3.2 Building a robust information management infrastructure lays the foundations for achieving compliance. If the foundations are robust, practical and comprehensive, the risks of non-compliance are reduced because there are systems and procedures in place to identify and mitigate (or eliminate) risks as and when they arise.

- 15.3.3 Non-compliance with UK GDPR can lead to enforcement action by the UK's data protection regulator, The Information Commissioner's Office (**ICO**) and/or result in civil claims for compensation by individuals.
- 15.3.4 Enforcement action can include the imposition of legal notices, audits and significant administrative fines. The prospect of criminal liability under UK GDPR remains, but only in limited circumstances such as where an employee deliberately accesses personal data for their own purposes without the organisation's consent. Developments in caselaw have also seen the possibility for an employer to be held vicariously liable for the acts of its employees when processing personal data.
- 15.3.5 A key feature of data protection under the UK GDPR is the accountability principle; an organisation not only has to process personal data in accordance with the data protection principles, but must also demonstrate compliance with those standards.
- 15.3.6 The ICO's Guide to the general data protection regulation provides a thorough summary of an organisation's obligations under data protection law.
- 15.3.7 Every organisation that processes personal data must pay a fee to the ICO unless they are exempt. The exemptions are very limited and most charities that operate almshouses will be required to pay the Tier 1 fee and to enter on the register of fee payers.

**Further resources:**



- ICO guidance: [Guide to the general data protection regulation](#)

## 15.4 Mapping personal data flows

- 15.4.1 The charity should undertake and maintain an information mapping exercise to identify flows of personal data into and out of the charity. Whenever a new contract or system is being considered, a data mapping exercise should be undertaken to identify whether any third-party processors have access to the charity's personal data. Where additional data is required, or the purpose of processing a particular sub-set of personal data changes, the data map will need to be updated. The output from the data mapping exercise can feed into the record of processing activities (**ROPA**) that most charities are required to maintain under Article 30 UK GDPR.
- 15.4.2 Whilst it is unlikely, if there are data flows outside of the UK (including to European countries) the charity should review arrangements to assess whether appropriate safeguards are implemented to protect personal data. This situation is more common than charities think as often their processors are based outside of the UK (e.g., if the charity keeps computer data in the cloud).

**Further resources:**



- ICO guidance: [Records of processing and lawful basis](#)
- ICO guidance: [A guide to International transfers](#)

## 15.5 Data Protection Risks

- 15.5.1 Data protection is an inherently risky area, including for charities dealing with highly sensitive information about vulnerable individuals, including special category and often criminal convictions data.
- 15.5.2 Data protection risks within the charity should be identified, recorded on the charity's risk register (see [section 7.2.6](#)) and reported to the trustees.



## 15.6 Data Protection Policies and Procedures

- 15.6.1 The provision of specified privacy information to individuals is a legal requirement and is usually met by providing a **PRIVACY NOTICE**. In contrast, a data protection policy is not a legal requirement, although it does help a charity comply with UK GDPR and demonstrate compliance with the accountability principle.
- 15.6.2 Where the ICO investigates personal data breaches, it will ask if there was a policy in place dealing with the matter that was the root cause of the breach. A data protection policy should:
- (a) accurately and candidly reflect how the charity processes personal data in practice;
  - (b) apply to all classes of data subject;
  - (c) apply to personal data held manually and in electronic format;
  - (d) if capturing personal data via a website, reflect that fact and be made available on the charity's website;
  - (e) be regularly reviewed, updated and version controlled;
  - (f) be brought to the attention of staff and efforts made to ensure that they realise its significance (e.g., if certain data breaches could result in disciplinary action, the policy should explain this);
  - (g) be covered in staff training; and
  - (h) be actively enforced and checks carried out to see if the policy is being applied in practice by staff.

## 15.7 Personal data breach policy and procedure

- 15.7.1 There is no express requirement in UK GDPR to adopt a policy on data breaches. However, UK GDPR requires that certain personal data breaches be reported to the supervisory authority (the ICO) within 72 hours of becoming aware of the breach. In some cases, individuals affected must also be notified. This statutory requirement means that in practical terms, there is an implicit requirement that the charity has a system in place for identifying, reporting and investigating personal data breaches.
- 15.7.2 In order to be able to comply with the 72 hours deadline for reporting certain data breaches, it follows that the charity's staff must be able to recognise a suspected or actual personal data breach and be under a duty to report it to the charity's data protection lead immediately. Recognition and handling of personal data breaches should therefore always be included in staff training and be regularly refreshed at various "touch points". Key staff policies should include an express obligation on staff to report actual or suspected breaches immediately to the charity's data protection lead.

## 15.8 Data protection training

- 15.8.1 UK GDPR requires the charity to implement appropriate technical and organisational measures that will ensure and help demonstrate that the charity complies with UK GDPR. If the ICO investigates a personal data breach, it will ask if staff receive mandatory data protection training. If the cause of the breach is a member of staff (including volunteers and trustees), the ICO will also ask if the training covered the issue that caused the breach. Records of attendance must be kept.
- 15.8.2 All staff (including volunteers and trustees) that have access to personal data should undertake basic mandatory data protection training on induction and before accessing any personal data. Staff should receive regular refresher training on a cycle. Members of staff who need to know more about data protection should be given enhanced training that is specific to their role.



## 15.9 Data Protection Impact Assessment (DPIA)

- 15.9.1 A Data Protection Impact Assessment (**DPIA**) is a process designed to help systematically analyse, identify and minimise the data protection risks of a project or plan. It is a key part of a charity's accountability obligations under the UK GDPR, and when done properly helps assess and demonstrate how to comply with the charity's data protection obligations.
- 15.9.2 The charity is required to conduct a DPIA when it is doing something new and the processing is likely to result in a high risk to the rights and freedoms of individuals. Such processing includes large-scale systematic monitoring of public areas, including use of CCTV, and the large-scale processing of special category personal data or personal data relating to criminal offences.
- 15.9.3 A DPIA can address more than one project and should cover:
- a description of the processing operations and the purposes including, where applicable, the legitimate interests pursued by the charity;
  - an assessment of the necessity and proportionality of the processing in relation to the purpose;
  - an assessment of the risks to individuals; and
  - the measures in place to address risk, including security and to demonstrate compliance.

### Further resources:



- ICO guidance: [CCTV and video surveillance](#)

## 15.10 Internal record of processing

- 15.10.1 UK GDPR requires that, unless a legal exemption applies, controllers must maintain an internal record relating to the processing of personal data.
- 15.10.2 If a controller is processing special category personal data (e.g., medical information) ([see section 15.2.5\(b\)](#)) the exemptions do not apply and so most charities will be required to maintain this record. The record must contain the following information:
- name and contact details of the charity, any joint controller, and the Data Protection Officer (if any);
  - the purposes of processing, description of categories of data subjects and the categories of personal data;
  - the categories of recipients including recipients in third countries or international organisations;
  - where applicable, transfers to a third country including the identification of that third country and where the transfer is based on explicit consent of the data subject, details of the appropriate safeguards that have been put into place to protect the personal data;
  - where possible, the envisaged time limits for erasure of the different categories of personal data;
  - where possible, a general description of the technical and organisational security measures to meet the obligations relating to security of data.



### 15.11 Processors

- 15.11.1 The UK GDPR imposes significant and specific statutory obligations on the charity as a controller regarding its selection of, and contract with, any processor.
- 15.11.2 If the charity, as a controller, shares personal data with a processor, Article 28 of the UK GDPR places an obligation on controllers and processors to enter into a written contract dealing with the data processing activities being undertaken. These contracts must include specific minimum terms, which are designed to ensure that processing carried out meets the requirements in the UK GDPR. Specifically, contracts must set out:
- (a) the subject matter and duration of the processing;
  - (b) the nature and purpose of the processing;
  - (c) the type of personal data and categories of data subject; and
  - (d) the controller's obligations and rights.

In addition, a data processing agreement must include specific terms or clauses in respect of:

- (e) processing only on the controller's documented instructions;
- (f) those authorised to process the personal data (in particular they must be subject to confidentiality obligations);
- (g) ensuring appropriate security measures are in place;
- (h) use (and limits on the use of) sub-processors;
- (i) rights of data subjects (e.g., to access or arrange for deletion of their own personal data);
- (j) assisting the controller in meeting their obligations;
- (k) end-of-contract provisions; and
- (l) audits and inspections.

#### Further resources:



- ICO guidance: [Contracts and liabilities between controllers and processors](#)

### 15.12 Data sharing with controllers

- 15.12.1 The charity is likely to share personal data with other controllers. In these scenarios, the parties are likely to be independent controllers because each will be using the personal data for their own respective purposes.
- 15.12.2 However, the situation will need to be carefully reviewed so as to precisely establish the status of the parties. The sharing should be documented in a data sharing agreement to record the respective intentions of the parties.

#### Further resources:



- ICO guidance: [Contracts and liabilities between controllers and processors](#)

### 15.13 Data Protection principles

- 15.13.1 UK GDPR contains seven principles setting the standard by which the charity must process personal data:

#### 1 Lawfulness, fairness and transparency;



- 2 **Purpose limitation;**
- 3 **Data minimisation;**
- 4 **Accuracy;**
- 5 **Storage limitation;**
- 6 **Integrity and confidentiality (security);**
- 7 **Accountability.**

#### 15.13.2 Principle 1: Lawfulness:

- (a) The charity must have a valid lawful basis in order to process personal data.
- (b) There are six lawful bases: consent, contract, legal obligation, vital interests, public task and legitimate interests. The two that will be used the most consistently are legitimate interests and consent.
- (c) Legitimate interests:
  - (i) One of the most flexible lawful bases that can be relied on to process ordinary personal data is “legitimate interests”. However, it must be relied on cautiously and carefully because it will not always be the most appropriate lawful basis. “Legitimate Interests” means that personal data may be processed where the processing is necessary for the charity’s legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual’s personal data which overrides those legitimate interests.
  - (ii) It is likely to be most appropriate where the charity uses people’s data in ways they would reasonably expect, and which have minimal privacy impact, or where there is a compelling justification for the processing. The charity should avoid using legitimate interests if it is using personal data in ways people do not understand and would not reasonably expect, or if some people would object if it was explained it to them.
  - (iii) Relying on this lawful basis is not always the most convenient as it involves taking on extra responsibility for considering and protecting people’s rights and interests. This involves balancing the charity’s interests against the impact that the processing has on the rights, freedoms and interests of the data subject.
  - (iv) When relying on “legitimate interests” to legitimise the processing of personal data, the charity should prepare a Legitimate Interests Assessment (**LIA**). This helps explain the effects the processing may have on individuals and where the balance of interest lies. It will also help the charity comply with the accountability principle.
  - (v) The LIA can be broken down into a three-part test:
    - 1 **Purpose test:** is the charity pursuing a legitimate interest?
    - 2 **Necessity test:** is the processing necessary for the legitimate interest identified?
    - 3 **Balancing test:** do the individual’s interests override the legitimate interest identified?
- (d) Consent:
  - (i) If the personal data is special category personal data ([see section 15.2.5\(b\)](#)), the consent obtained must be explicit.
  - (ii) UK GDPR sets a high standard for legally valid consent. In brief the requirements are as follows:
    1. Consent must be **unambiguous** and involve a clear affirmative action (it must be “opt-in”, not “opt-out”). Pre-ticked opt-in boxes are not permitted.



2. Consent must be **specific** to the purpose for which the personal data will be used (“granular” consent options for distinct processing operations must be given).
3. Consent must be **obvious**, prominent, concise and user-friendly.
4. Consent must be **separated** from other general terms and conditions of a contract.
5. Consent must be **freely given**, and it should not be a precondition to delivery of a service. The charity cannot require individuals to consent to their data being used for marketing as a condition of a contract.
6. Individuals have the right to withdraw consent and it must be as **easy to withdraw** consent as it is to provide it.
7. The charity must keep **evidence** of the consent.
8. **Explicit consent** (for special category personal data (see section 15.2.5(b)) and criminal offence personal data (see section 15.2.5(c)) must be expressly confirmed in words, rather than by any other positive action such as a tick box or clicking through a page on a website.
9. Consent will not last forever. How long consent remains valid depends on the context and purpose for which the personal data is used. A system is needed to **refresh** consents at appropriate intervals.

#### 15.13.3 Principle 1: fairness and transparency - privacy notices

- (a) If any aspect of the charity’s processing is unfair it will be in breach of principle 1, even if a lawful basis for the processing can be demonstrated. In general, fairness means only handling personal data in ways that people would reasonably expect and not in ways that have unjustified adverse effects on them. The charity should have explained how it uses personal data in its privacy notice(s).
- (b) Principle 1 requires that processing of personal data is transparent. This is closely linked to fair processing. Transparent processing is about being clear, open and honest with individuals about who the charity is, and how and why it uses their personal data. Individuals must be told about the charity’s processing in a way that is easily accessible and easy to understand in clear and plain language. UK GDPR gives individuals a right to be informed about why and how their personal data is processed. This is sometimes called “privacy information” and most controllers meet this legal requirement by issuing individuals with a privacy notice. The challenge for all controllers is to provide all of the privacy information the UK GDPR requires and, at the correct point in time, in an accessible and concise way.
- (c) Under the UK GDPR, the charity must provide this privacy information at the point in time when their personal data is collected. If the personal data is collected from someone other than the data subject, the privacy information must be provided within a month at the latest, or at the point when it first contacts the data subject or shares their personal data with a third party.
- (d) Under UK GDPR, the charity will need to provide individuals with the following privacy information:
  - (i) who the charity is;
  - (ii) the charity’s contact details;
  - (iii) contact details of the charity’s Data Protection Lead / Officer (if relevant);
  - (iv) what the charity intends to do with any personal data they provide;
  - (v) who the charity is sharing their data with;
  - (vi) any legitimate interests relied on to process the personal data;



- (vii) whether the personal data will be transferred outside the UK and if so, the steps the charity proposes to take to protect it;
- (viii) how long the charity will retain it for;
- (ix) the legal rights the individuals will have in respect of their personal data including their right to withdraw consent at any time (if relevant) and the right to complain about the charity to the ICO;
- (x) whether the charity requires the personal data in order to meet a contractual or statutory requirement, and the possible consequences if they fail to provide the charity with their personal data (e.g., the charity may require personal data in order to comply with its statutory obligations as an employer);
- (xi) whether the charity carries out automated decision making; and
- (xii) the sources from which the charity obtained their personal data, if it was not provided by them directly.

#### 15.13.4 Principle 2: Purpose limitation:

- (a) Principle 2 provides that personal data is collected for specified, explicit and legitimate purposes and must not be further processed in a manner which is incompatible with those purposes. An example of repurposing might be where personal data is obtained in order to process an application for housing, but then the information collected is also used for marketing purposes.
- (b) Whilst it is usually acceptable to process personal data for related purposes, it would not be lawful under the UK GDPR to process personal data for entirely different purposes or in a way which the data subject would not reasonably expect.

#### 15.13.5 Principle 3: Data minimisation:

- (a) Principle 3 of UK GDPR requires that personal data processed by the charity is adequate and relevant and necessary for the purpose for which it is intended. Personal data that is collected should not be excessive in relation to the purpose for which it is collected.
- (b) The practical implications of complying with principle 3 are:
  - (i) Reviewing all forms and processes where personal data is captured (e.g., application forms) to ensure that sufficient information is requested to fulfil the purpose for which the data is used (e.g., to assess a prospective resident meets the criteria to qualify as a beneficiary) but to ensure that requests for personal data are not excessive. Reviews should take place regularly and systematically. The charity should document the fact that the review has taken place in order to comply with the accountability principle.
  - (ii) Ensuring that personal data is not accessible to those that do not need to access it (e.g., ensuring that staff can only access the personal data of residents that they need to see). Access to special category personal data in particular should be reviewed to ensure that access is appropriate.
  - (iii) Ensuring that personal data is not shared with recipients that do not need to see it. If the charity does need to share personal data, ensure that only the minimum amount required to fulfil the purpose is shared.

#### 15.13.6 Principle 4: Accuracy:

Principle 4 of UK GDPR requires the charity to take steps to ensure that personal data is accurate and where necessary kept up to date.



#### 15.13.7 Principle 5: Storage limitation:

- (a) Under UK GDPR, there are two requirements which relate to the retention of personal data.
  - (i) Firstly, the charity is required to identify how long it retains personal data in its privacy notice and in any response to a subject access request (**SAR**) (see [section 15.14.2\(b\)](#)). It follows that under UK GDPR, the charity will need to have a policy in place relating to the retention period of personal data or the criteria used in determining that retention period.
  - (ii) Secondly, principle 5 of UK GDPR requires the charity to ensure that personal data is kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data is processed; personal data may be stored for longer periods providing this is for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the UK GDPR in order to safeguard the rights and freedoms of individuals.
- (b) In practical terms this principle 5 means that the charity needs a system in place which operates to ensure that the charity retains personal data only for as long as either statute or legitimate organisational reasons permit. After any statutory retention period has elapsed or as soon as the purpose of processing the personal data has expired, the personal data should be destroyed, or otherwise transferred on to another party where stipulated by statute to do so.
- (c) Records are subject to multiple statutory retention requirements and the retention period will vary as between different records. In some cases, a particular record will not be subject to any statutory retention period at all, in which case, its retention may be governed by official guidance and/or organisational needs.
- (d) The risks associated with a breach of the duty not to retain personal data for longer than is necessary are usually relatively low, especially where no other breaches are apparent. However, the situation can change where a breach of this principle arises in the context of a much more serious breach such as a hack or loss of data. In these cases, the ICO is known to bring enforcement proceedings not just in respect of any failure to implement adequate security measures but also in respect of other incidental breaches including the retention principle.

#### 15.13.8 Principle 6: Security:

- (a) UK GDPR requires the charity to keep personal data safe and secure. Specifically, principle 6 says personal data shall be:  
*'processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures'*
- (b) In general terms, principle 6 is intended to ensure that personal data held on the charity's network, in information systems, or in manual form, is held securely. In practical terms this means implementing measures to ensure the charity's network and information systems can resist unlawful, or unauthorised acts (e.g. preventing staff from gaining unauthorised access to those parts of the network which they are not entitled to access) or malicious acts (e.g. denial of service attacks or hacks) or accidental events (fire, theft, flood, data loss through power outage) that adversely affect the availability, authenticity, integrity and confidentiality of stored or transmitted personal data.
- (c) The requirement to implement security measures applies equally to manual data as it does to data held electronically, so having a system in place for the secure storage and destruction of manual personal data is also relevant.

- (d) The charity is required to achieve compliance with principle 6 through the deployment of various appropriate technical and organisational measures. Examples of technical measures include encryption, firewalls, anti-malware, and passwords. Examples of organisational measures include the provision of staff training and the active enforcement of a robust and practical staff data protection policy.
- (e) UK GDPR does not expect the charity to achieve perfect security. Instead, it requires the adoption of a risk-based approach where the implementation of security measures is balanced against the risks surrounding the nature of the personal data being processed and the likelihood and severity of an adverse incident arising. In determining what level of security is appropriate, the charity must consider the following factors:
  - (i) the state of the art (i.e., what security solutions are currently available on the market);
  - (ii) the financial cost to the charity of implementing those security measures; and
  - (iii) the nature, scope and purposes of processing as well as the risks to the rights and freedoms of the data subjects.
- (f) UK GDPR does not provide an exhaustive list of appropriate technical and organisational measures that might be appropriate for any given charity, but it does suggest the following five factors which should be considered:
  - (i) pseudonymisation of personal data;
  - (ii) encryption of personal data;
  - (iii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - (iv) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
  - (v) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- (g) The charity should have a documented data security policy that covers personal data held electronically and manually. Staff that have access to personal data should be required to read and accept the security policies before gaining access to any personal data including data held manually.
- (h) All staff that have access to personal data should be required to undertake mandatory data protection training which includes how to keep personal data secure and what to do if they see or suspect a personal data breach.

#### Further resources:



- ICO guidance: [A guide to lawful basis](#)
- ICO guidance: [Right to be informed](#)
- ICO guidance: [Storage limitation](#)
- ICO guidance: [Security](#)
- ICO guidance: [Data storage, storing and security](#)

## 15.14 Individual legal rights

- 15.14.1 UK GDPR gives individuals legal rights relating to how the charity processes their personal data. Failure to comply with the exercise of one of those rights can result in enforcement action.
- 15.14.2 The UK GDPR gives data subjects the following legal rights:

- (a) right to be **informed** about the collection and use of their personal data (this information is usually contained within the privacy notice);
- (b) right of **subject access** (to obtain a copy of their personal data as well as other supplementary information);
- (c) right to **rectification** if inaccurate personal data;
- (d) right of **erasure** (also known as the right to be forgotten);
- (e) right to **restrict processing** in certain cases;
- (f) right to **prevent automated decision-making and profiling**;
- (g) right of **data portability**; and
- (h) right to **object** to processing in certain cases.

#### Further resources:



- ICO guidance: [A guide to individual rights](#)
- ICO guidance: [A guide to subject access](#)

### 15.15 Marketing and fundraising

- 15.15.1 To the extent that the charity processes personal data for the purposes of marketing, fundraising and development purposes, UK GDPR rules are engaged. Precisely which rules are engaged will necessarily depend on how personal data is processed. However, generally, as a minimum, the charity will need to comply with at least the following UK GDPR rules:
- (a) Lawfulness, fairness and transparency: Identifying a valid UK GDPR lawful basis in order to legitimise the charity's marketing, fundraising and development activities. (it may identify more than one) (e.g., "legal obligation" to process personal data in the context of a financial donation, "consent" to send direct marketing emails, or "legitimate interests" to legitimise sending promotional material by post). The charity's privacy notice must provide meaningful privacy information relating to the use of personal data for direct marketing and fundraising.
  - (b) The right to object: Data subjects have the right to object to their personal data being processed for direct marketing purposes. This fact must be identified to individuals in the charity's privacy notice.
- 15.15.2 Where direct marketing communications are sent by email both the DPA (and UK GDPR) and PECR are engaged. PECR, known as the "anti-spam" law, may be affected by new ePrivacy regulation in the coming years.
- 15.15.3 If the charity is carrying out direct marketing, the relevant law needs to be understood:
- (a) **UK GDPR:**
    - (i) In order to comply with principle 1, the charity will need to identify a legal ground under UK GDPR to allow it to process personal data for marketing. The two legal grounds in UK GDPR which are most likely to be relevant for marketing are "consent" or "legitimate interests".
    - (ii) **Consent**: UK GDPR sets a high threshold for consent and any mechanism used to obtain consent must now be specific, granular, clear and prominent, opt-in, documented and easily withdrawn. It must not be bundled-up with the terms and conditions of a contract, but isolated. Individuals will need to be told that they have the right to withdraw their consent at any time and how this can be achieved.
    - (iii) **Legitimate interests**: this legal basis applies where the processing is necessary for the purposes of the legitimate interests of the charity (or a third party). Providing those interests are not "overridden" by the data subjects' rights, freedoms and



interests, then such processing will be lawful. The UK GDPR recitals expressly provide that such legitimate interests can, in some circumstances, include direct marketing purposes.

(b) **PECR:**

- (i) However, the charity must also consider PECR ([see section 15.1.3](#)). PECR regulates the sending of unsolicited direct marketing messages to both individual and corporate subscribers using electronic means such as an email or telephone campaign or even messages directed at individuals via a social networking channel.
- (ii) Direct marketing is not limited to advertising goods or services for sale; it also covers promoting an organisation's aims and ideals. The effect of this is that the direct marketing rules in the DPA, the UK GDPR and PECR apply to the promotional, campaigning and fundraising activities of all not-for-profit organisations.
- (iii) The ICO has issued guidance on its interpretation of the words "direct marketing" which provides that they consider any message that contains a *marketing element* to be direct marketing, even where such marketing is not the main purpose of the message. For example, the ICO is likely to consider a charity newsletter to be direct marketing even where 90% of the content amounts to essential communications and 10% relates to information about fundraising plans.
- (iv) Although generally PECR demands that marketing emails can only be sent where there is specific consent to do so, this rule is relaxed for existing "customers". Known as the "soft opt-in", organisations can send marketing emails and texts without specific consent from individuals if:
  1. the contact details were obtained in the course of a sale (or negotiations for a sale) of a product or service to that person;
  2. they are only marketing their own similar products or services; and
  3. the individual was provided with the opportunity to refuse or opt-out of the marketing both at the point when those details were initially collected and in every message after that.
- (v) Unfortunately for charities, at present, the "soft opt-in" can only ever apply to marketing products or services in a *commercial* context and as such charities and other not-for-profit bodies are not able to rely upon the soft opt-in when sending fundraising texts or emails, even to existing supporters. This does not mean that the soft opt-in is not available where a charity sends wholly commercial marketing messages, however, there is an inherent risk in using the soft opt-in which needs careful evaluation. It is likely that the soft opt-in will still be available in any new ePrivacy regulation and, depending on the wording of the final text, it may or may not be available for fundraising and development purposes.

**Further resources:**



- ICO guidance: [Direct marketing guidance](#)

## CHECKLIST – DATA PROTECTION

- ☒ Is the charity a controller or a processor of data?
- ☒ Does the charity hold any personal data, special category data and/or criminal offence data?
- ☒ Is the charity registered with the ICO?



- ☒ Does the charity have a record of processing activities?
- ☒ Does the charity hold any data outside of the UK?
- ☒ Are all data protection risks recorded on the charity's risk register?
- ☒ Does the charity have a data protection policy?
- ☒ Do all staff know the procedure to follow in the event of a data breach?
- ☒ Have all staff that have access to personal data received appropriate training?
- ☒ Does the charity use CCTV and, if so, does it have a CCTV policy?
- ☒ Does the charity have an internal record of how data is processed?
- ☒ Has the charity carried out a legitimate interests assessment of all data that it holds?
- ☒ Does the charity have a privacy notice?
- ☒ Does the charity have a policy for responding to subject access requests?
- ☒ Does the charity have a policy on retention of data?



## 16 BUILDINGS (REPAIR AND MAINTENANCE) AND FUNDRAISING

### 16.1 Introduction

- 16.1.1 In order to ensure that the almshouses remain fit for purpose the charity should have a regular programme of maintenance and refurbishment of the existing almshouses. The charity should also consider the potential to build new almshouses especially if substantial reserves have been accumulated.
- 16.1.2 Before carrying out any work or project, the trustees should ensure that they have the necessary powers (for example the power to borrow or to fundraise, see [section 3.5.10](#)), as well as considering health and safety implications ([see section 7.3](#)) and the need to comply with planning control, conservation and building regulations.
- 16.1.3 The maintenance and management of buildings is made easier with long term planning and, in particular, the trustees have a duty to ensure that the charity has sufficient resources to carry out necessary maintenance. The charity will normally have an Extraordinary Repair Fund and a Cyclical Maintenance Fund for this purpose ([see section 8.8](#)) or other reserves ([see section 8.7](#)).
- 16.1.4 Trustees have a core duty to maintain the almshouses and any wider estate to fulfil the charity's primary charitable purpose.

### 16.2 Repair and Maintenance of Existing Buildings

- 16.2.1 Almost every part of the almshouses (including communal areas) will need maintenance and long-term replacement.
- 16.2.2 Responsive repairs, cyclical maintenance (i.e., predicted maintenance undertaken on a regular cycle) and planned works should be budgeted for by:
  - (a) extrapolating past expenditure; and
  - (b) forecasting future expenditure using quinquennial surveys which identify specific works needed, the timescale for such works (within the next 5 years) and the estimated cost.
- 16.2.3 The Specimen Outline Budget, issued annually, by The Almshouse Association provides estimates for responsive repairs and cyclical maintenance based on the age of the almshouses and the geographical location.
- 16.2.4 Trustees should agree a clear policy to delegate authority for decision making before embarking on any repairs, maintenance or building work ([see section 4.12](#)). Emergencies, such as a flood or boiler breakdown, require quick decisions. Having in place appropriate delegated authority with workable and reasonable financial limits approved by all trustees and recorded at a properly convened meeting of trustees will enable decision to be made quickly if necessary.
- 16.2.5 It is essential that trustees ensure that any repair has been undertaken to a satisfactory standard before settling invoices with contractors.
- 16.2.6 Value for money:
  - (a) Trustees have a duty to be prudent with the charity's resources ([see section 4.6.2\(a\)](#)) and are required to ensure that the cost and quality of works undertaken provide value for money.
  - (b) Charities registered with the Regulator of Social Housing will need to meet specific criteria in this regard ([see the Regulatory Standards and Tenant Standards Measurement referred to in section 13](#)).
  - (c) Trustees may wish to join a benchmarking group for smaller housing providers and use The Almshouse Association's specimen outline budget to check pricing and value.
- 16.2.7 Decent Homes Standards:
  - (a) The charity should be mindful of the Decent Homes Standards which is defined, in general terms, as social housing that meets the following four criteria:

- (i) the current statutory minimum standard for housing (i.e., by having no hazards assessed as serious by reference to the HHSRS ([see section 7.5](#));
    - (ii) is in reasonable state of repair;
    - (iii) has reasonable modern facilities and services; and
    - (iv) provides a reasonable degree of thermal comfort.
  - (b) All charities that are Registered Providers of Social Housing are required, as a condition of registration, to ensure that their almshouses meet the Decent Homes Standard and all charities are encouraged to adopt the standards for best practice reasons.
  - (c) The Government is currently consulting on introducing a similar Decent Homes Standard to the private sector.
- 16.2.8 Before instructing a contractor ([see section 7.16](#)) to carry out any works the charity should draft a clear specification detailing the works, type, style and quality of materials. Contractors are often chosen by way of recommendation; however, the following checks are essential for all contractors:
- (a) references;
  - (b) insurance;
  - (c) suitable qualifications (e.g., GasSafe, NICEIC).

#### Further resources:



- The Almshouse Association website: see **Specimen Outline Budget** in [Model Policies and Templates](#)
- Regulator of Social Housing: [Value for Money Standard and Code of Practice](#)
- Regulator of Social Housing: [Home Standard](#)
- Department for Communities and Local Government: [“A Decent Home: Definition and guidance for implementation \(June 2006 – update\)”](#)
- Gas Safe Register: [Find and engineer or check the register](#)
- NICEIC: [Find a contractor](#)

### 16.3 Responsive Repairs, Cyclical Maintenance, Planned Works and Void Works

- 16.3.1 Ensuring almshouses meet health and safety standards is central to day-to-day management of the charity ([see section 7](#)).
- 16.3.2 Trustees must ensure that all contractors working on site in whatever capacity are appropriately insured ([see section 7.16](#)).
- 16.3.3 Responsive Repairs:
- (a) Trustees should ensure that residents know how to access the repair service provided by the charity so that urgent or emergency repairs are able to be reported by residents and responded to in a timely manner.
  - (b) The charity should have a system to triage repairs to ensure the prudent use of charitable funds but trustees should ensure that emergencies are attended to without delay.
  - (c) It is important that the charity clearly communicates with residents what constitutes an emergency and what can wait until the next working day or week. Clear standards of detailing anticipated response times are useful to help set expectations.
  - (d) Information about the charity’s approach to responsive repairs and the process to follow should be included in the Residents’ Handbook ([see section 10.16](#)).

16.3.4 Cyclical Maintenance:

- (a) Cyclical Maintenance is maintenance that can be predicted and undertaken on a regular basis such as gas servicing.
- (b) The charity is advised to have a programme of cyclical works to ensure that regular essential maintenance is undertaken within a planned budget.

<b>Example budget</b>		
The charity's quinquennial survey suggests that the following elements in the almshouses need replacing:		
<b>Item</b>	<b>Maintenance</b>	<b>Renew</b>
Windows (wooden frames)		
Doors external		
Doors internal		
Decoration internal		
Decoration external		
Bathroom		
Kitchen		
Heating		
Plumbing		
Electrics		
Chimney		

16.3.5 Planned Works and Void Works:

- (a) Using the information from the quinquennial survey and regular stock condition checks, the charity should be able to programme renovations, redecorations and refurbishments.
- (b) When almshouses become vacant, an opportunity arises for trustees to undertake significant updating.
- (c) Assumptions can be made on the number of voids becoming available over a ten-year period. The charity can then set aside funds to respond to these situations as they arise.

<b>Summary plan for maintenance / cyclical work</b>	
(1)	Provide the residents with a reasonable period of notice of all planned works.
(2)	Where appropriate seek resident involvement, but the final decision and responsibility is that of the trustees.
(3)	Discuss the impact of any works on the residents.
(4)	Put the plan in writing and provide residents with a copy.



- (5) Where residents are required to leave their property in order for the works to be undertaken, the Terms of Appointment ([see section 10.16.2](#)) should be checked first to ensure trustees follow any pre-agreed procedure.
- (6) If decanting of residents is anticipated, the charity should draft and approve a decanting policy in good time and prior to the process starting. Residents required to decant should be given plenty of notice unless the works are being undertaken in an emergency.

#### Summary process for refurbishments

The following process is commonly used when undertaking refurbishments, renovations or void turnarounds. Trustees are strongly advised to appoint a suitably qualified professional to assist in the oversight and administration of larger contracts. This could be a project manager or contract administrator and is usually a Chartered Surveyor.

- (1) Draft a specification for the works using the Decent Homes Standard ([see section 16.2.7](#) and any requirements detailed in risk assessments (such as a Fire Risk Assessment ([see section 7.6](#)) and in accordance with any regulations (such as Building Regulations).
- (2) Request three recommended contractors to quote against the scope of works. (A formal tender process is recommended for larger contracts.)
- (3) Check the charity's insurance. It is the trustees' duty to ensure all contractors and professionals have adequate insurance.
- (4) Notify the charity's insurance broker of the works planned (in case additional cover is required whilst the work is undertaken).
- (5) Appoint the contractor and confirm who will oversee the works on behalf of the charity. For larger works progress will be overseen by the appointed contract administrator/project manager. In either case, it is advisable to use a formal written contract in order to protect both parties, this does not have to be expensive or complicated and suitable forms are available from the Joint Contracts Tribunal and the Royal Institute of British Architects.
- (6) Develop a time plan.
- (7) Liaise with those where the works will have an impact (e.g., residents/neighbours/etc.).
- (8) Ensure the contractor has the required welfare facilities.
- (9) Keep the contractor to the time plan.
- (10) Snag the works to ensure a satisfactory standard (for larger works this should be overseen by the contract administrator/project manager).
- (11) For larger projects the contract administrator/project manager should withhold a percentage of the contract sum to ensure any defects occurring within a specific period are undertaken satisfactorily.
- (12) Ensure all warranties, guarantees and operations manuals are received prior to the end of the contract and stored safely.

## 16.4 Adapting Almshouses

- 16.4.1 Trustees have a duty to ensure the safety of residents, however, a balance is needed when an almshouse becomes unsuitable for independent living ([see section 10.11](#)) and a resident requires long-term or structural adaptations to be made in order to continue living there.
- 16.4.2 Trustees also have a duty to consider making reasonable adjustments to address any disadvantages experienced by those that suffer a disability ([see section 10.26.7](#)).



- 16.4.3 Minor aids that can be introduced to enable a resident to live more comfortably and safely, such as grab rails, bath boards, improved lighting should be welcomed. There are often grants available for such work or they may be available from Social Services.
- 16.4.4 Trustees should be aware that health professionals and social services are sometimes under pressure to find ways to keep residents in their homes regardless of the suitability of the accommodation. They may not be aware of the Trustees' duty of care and the need for residents to live independently in order that the duty of care can be discharged. Trustees and staff should take the time to explain where necessary.
- 16.4.5 More significant changes to buildings such as provision of permanent ramps, shower cubicles and stair lifts can sometimes be accommodated without structural change to the fabric of the building.
- (a) Subject to compliance with their duties under the Equality Act 2010 ([see section 10.26.7](#)) it is at the trustees' discretion whether or not to install such changes.
  - (b) Trustees should be prepared to pay for such improvements in order that residents are not caused hardship or that residents without funds are not discriminated against. Where one resident is helped, trustees should ensure they have funds to help another resident, when needed.
  - (c) In some cases, and depending upon the resident's personal circumstances, Social Services and/or local authority grants may be available for this type of work. If such funding is being obtained the charity should appoint a surveyor to at least provide a report on completion and ensure that the works are carried out and finished to an appropriate standard. The grant funding will normally cover these costs.
- 16.4.6 Structural changes to the almshouses, at the requests of residents, are rarely appropriate. Almshouses are provided for residents to live independently and trustees are unlikely to be able to discharge their duty of care to the resident, the wider community and the charity if the resident requires a level of support such that they are not able to live independently. In such circumstances sheltered or supported homes may be more appropriate. In the event that structural changes are required, trustees should begin a sensitive discussion with residents and their families/next of kin about whether the almshouse is still suitable for their needs. If not, the resident should be supported to find alternative accommodation. ([See section 11.3.](#))

## 16.5 New Builds

- 16.5.1 The Almshouse Association welcomes the building of new almshouses and is able to provide support and guidance to individual charities wishing to undertake such projects.
- 16.5.2 Replacement almshouses:
- (a) Trustees should examine the case for removing old almshouses and building new. Often the older buildings have a longer and more viable future than new builds with a shorter life expectancy. If the older property is listed it may have considerable heritage value to the charity in the long term.
  - (b) Before embarking on providing new almshouses, trustees should check their Governing Document to ensure they have the necessary powers to do so ([see section 3.5.10](#)). This includes identifying necessary powers to take loans, provide security against a loan and use of charitable funds (included restricted funds and endowment).
- 16.5.3 New build is a complex activity the detail of which depends upon:
- (a) the Governing Document of the charity and what it permits ([see section 3.5](#));
  - (b) whether the charity is incorporated or unincorporated ([see section 3.3](#)) given the potential liabilities associated with a project; and
  - (c) whether or not the charity is registered as a social landlord ([see section 13](#)).
- 16.5.4 The following information is designed to assist trustees in their preliminary discussions about new build projects before they decide whether to embark on new build and includes common milestones. More detailed discussions should take place with a suitably qualified project manager in conjunction with legal,



financial and planning advice. A working party could be set up to gather information and report back to the board of trustees.

- 16.5.5 Trustees should consider how much time they have available to dedicate to the new project. Whilst decisions can be delegated ([see section 4.12](#)), responsibility cannot. One way to protect the trustees and the charity is to employ suitably qualified professionals including a qualified project manager to ensure the relevant contractual paperwork is managed and progress monitored regularly. Employing professionals is strongly recommended.
- 16.5.6 Legal Advice:
- (a) Before embarking on a new build project, the charity should obtain legal advice on whether the trustees have the required powers within the Governing Document ([see section 3.5.10](#)). Such powers include the ability to take a loan and provide security against charity property.
  - (b) If the charity is unincorporated ([see section 3.3](#)) it may wish to consider incorporating a corporate entity before carrying out the project so that the trustees benefit from limited liability for the debts of the charity.
- 16.5.7 Financial Advice:
- (a) Trustees are advised to consult their accountant on whether they have sufficient funds for their proposal.
  - (b) It is essential to receive clear advice on the charity's restricted funds, unrestricted funds and endowment. In particular, the charity cannot borrow from its permanent endowment without appropriate authorisation from the Charity Commission.
  - (c) Servicing a loan must be incorporated into the budget and cashflow forecast. If the loan is to be secured against property then proper advice should be obtained ([see section 8.13](#)).
  - (d) Receipt of any grant requires accounting for within the Standard of Recommended Practice (SORP).
- 16.5.8 Feasibility Study:
- (a) Once the preliminary advice above has been taken, trustees should employ a professional project manager to undertake a feasibility study.
  - (b) The study should examine the project as a whole including the possible funding streams given the current and predicted balance sheet and income and expenditure of the charity.
  - (c) A planning consultant may be required if the chosen land does not have a live planning permission that covers the anticipated build.
- 16.5.9 As the project progresses the following professional advice should be factored into the decision-making process:
- (a) Project Managers: trustees may wish to employ a project manager to oversee activity throughout the lifetime of the project.
  - (b) Planning Consultant: to advise on the likelihood of planning permission, the effect on any listed buildings, submitting the application forms and representing the charity throughout the planning process.
  - (c) Chartered Architect: to produce the building design, layout and siting in accordance with the trustees' brief.
  - (d) Chartered Surveyor: to administer/oversee the building contract (the Project Manager may also be able to do this) to include scoping the works, providing the tender documentation, going out to tender and providing the tender report with recommendation to the trustees, overseeing the contract paperwork, snagging the finished project and overseeing the retention and defect period (often now formally known as the rectification period).
- 16.5.10 In the case of a new build project the trustees have an opportunity to adopt the significant features of a traditional almshouse that go towards making residents feel secure and connected. The charity should consider using an architect from The Almshouse Association's Panel of Consultants.



16.5.11 The trustees may wish to consider adopting key almshouse characteristics such as:

- (a) a courtyard;
- (b) shared walkways to the front door;
- (c) lower garden fences allowing residents to talk over the fence;
- (d) communal places to meet in the gardens;
- (e) small growing areas in the gardens;
- (f) views over shared communal areas and neighbours' front doors;
- (g) design features such as high chimneys, steep pitched roofs;
- (h) views that allow residents to see "life".

**Further resources:**



- The Almshouse Association: [Panel of Consultants](#)

## 16.6 Funding

16.6.1 Funding for projects may be available through:

- (a) Grants from Homes England:
  - (i) The Government has a grant programme where almshouses are encouraged to apply for funding for new build and major projects.
  - (ii) Access to the funds must be through a recognised body such as The Almshouse Consortium (**ACL**). ACL is a separate entity to The Almshouse Association and charities wishing to bid for funds are required to provide a director to sit on the board of ACL during the lifetime of that programme. Other recognised bodies are also able to bid for funds.
  - (iii) If the charity seeks a grant through Homes England, the trustees should be aware of the implications including the likely requirement to become a Registered Provider of Social Housing ([see section 13](#)) and the administrative changes required to the day-to-day running of the charity as a result.
- (b) Funds from the Local Authority:
  - (i) These may be available from a particular fund (such as a Mayor's Fund), a "s106 fund" where a private developer building open market housing in the local area has been required to contribute to offsite affordable housing, or through the Community Infrastructure Levy (**CIL**).
  - (ii) The Almshouse Association can assist charities wishing to contact their local authority.
- (c) Loans:
  - (i) High Street banks and charity bank specialists such as Charity Bank and CAF Bank may be able to provide funding.
  - (ii) Before taking out a loan the trustees should consider the impact of servicing the debt and take appropriate advice.
  - (iii) The Almshouse Association also provides interest-free loans usually on a ten-year repayment basis.

**Further resources:**

- The Almshouse Association website: [Details of how to access loans and funding from The Almshouse Association](#)

**16.7 Fundraising and Sponsorship**

- 16.7.1 Before carrying out any fundraising project the charity should be clear on the parameters of the project for which it is fundraising.
- 16.7.2 The charity should draft a proposal that sets out:
- (a) how much money is required;
  - (b) the charity's history, mission and values;
  - (c) the level of need and why it is both important and urgent;
  - (d) the project's specific objectives, how this will benefit residents and how the charity will know if the project is successful;
  - (e) what would happen if the project were not funded (i.e., to avoid the issues of a failed appeal which would result in funds having to be returned to donors);
  - (f) the amount required and when it is required. If possible, the total budget should be broken down into a 'shopping list' of smaller sums;
  - (g) how donors can help and why they should give;
  - (h) how the project will fund itself in the future if there are on-going costs.
- 16.7.3 This proposal is often called a "Case for Support" and forms the basis of the charity's fundraising strategy. Following the drafting of the Case for Support the charity should check it with others outside the organisation and seek feedback on whether those individuals understand the case and if it is thought to be compelling.
- 16.7.4 The charity should consider possible approaches to fundraising:
- (a) using a local celebrity to raise the charity's profile or that of the project;
  - (b) setting up a web page and Facebook page;
  - (c) crowd funding;
  - (d) using the charity's board and their contacts; and
  - (e) holding events to attract interest or generate funds.
- 16.7.5 Some charities use an external company to help with project fundraising. If the charity is considering a fundraising consultant trustees should ask to speak to past clients. The charity should be satisfied that it will have a good chance of gaining more through their employment than the cost of employing them.
- 16.7.6 Grants:
- (a) The charity should consider what grants might be available for the project. Grants are often provided by:
    - (i) local councils;
    - (ii) county Foundations;
    - (iii) local trusts;
    - (iv) companies;
    - (v) grant making charities;
    - (vi) the Round Table;
    - (vii) masonic lodges;

- (viii) Lions; and
- (ix) the National Lottery.
- (b) It is possible to purchase a list of grant-making bodies.
- (c) The charity's local Community Volunteer Centre (or CVS) should be able to help with identifying local grant providers.
- (d) The charity should use the Case for Support when applying to grant-making bodies.
- (e) Personal relations can be of value and it is worth contacting the secretary of any organisation that the charity is applying to for grants and asking for their help in applying. It is in their interest to help applicants.

#### 16.7.7 Loans:

- (a) If the charity applies for a loan it is likely to need to demonstrate affordability by preparing three/five years projected income and expenditure schedule. This should include any uplift in WMC expected and voids and maintenance costs planned.
- (b) CAF Bank and Charity Bank seek to support almshouses along with most high street banks.
- (c) The Almshouse Association offers loans and grants to members in specific circumstances.

#### Further resources:



- Charity Commission guidance: [Charity fundraising: a guide to trustee duties \(CC20\)](#).
- The Almshouse Association website: [Details of how to access loans and funding from The Almshouse Association](#)

## 16.8 Energy efficiency and Energy Performance Certificates

- 16.8.1 All charities should aim for maximum energy efficiency, to save costs and provide a better environment for their residents.
- 16.8.2 It has been established that there is no legal requirement for almshouses to have Energy Performance Certificates (EPCs) irrespective of whether the buildings are listed or not. However, it is recommended that EPCs be obtained as it is likely they may be a requirement in the future and indicate that almshouse charities are abiding by best practice in the provision of their accommodations.
- 16.8.3 The current minimum level efficiency rating for domestic properties is Band E. It is highly likely that the government will seek to impose a requirement for all residential leased properties to achieve an EPC rating of C or above by 2030. General advice and recommended practice about EPCs are as follows:-
- 16.8.4 EPCs are valid for 10 years and should be made available to new residents if required.
- 16.8.5 EPC are required at the time of appointing a resident.
- 16.8.6 An EPC is valid for 10 years and can be reused as many times as required within that period.
- 16.8.7 The regulations require an EPC to be commissioned, if there is no valid EPC for that building, before a building is put on the market (either for a sale or for the grant of a tenancy or lease)
  - (a) An EPC must be produced by an accredited energy assessor who is a member of a government approved accreditation scheme.
  - (b) All advertisements in the commercial media must clearly show the energy rating of the building (where this is available).
  - (c) The regulations require an EPC to be given free of charge to the person who becomes the buyer or tenant of the building.
  - (d) An EPC shows the energy efficiency rating on an A-G rating scale for a building.



- (e) The EPC includes recommendations on how to improve energy efficiency.
- (f) The EPC may also include information showing which of the recommendations would be eligible for finance under the Green Deal scheme, if they were carried out.

#### 16.8.8 EPC and Listed Buildings:

- (a) An EPC is required for a listed building.
- (b) Listed buildings and buildings in conservation areas may obtain an exemption if *"in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance"*. However, the difficulty with this is that the exemption can only be obtained if the survey for the EPC has already been carried out and the recommendations are known, have been considered and their impact on any significant historic fabric has been assessed. This is likely to be way beyond the remit of the vast majority of accredited energy assessors and could involve considerable time. It is also not easy to get free, definitive advice even from local authority conservation officers regarding the impacts as they are unlikely to have seen the building and the recommendations in the EPC are generic.
- (c) Each situation will also differ and whilst some changes are extremely unlikely to impact on a listed building, e.g., changing light bulbs, adding a hot water cylinder jacket, upgrading heating controls; others will be more finely balanced, e.g., adding loft insulation, insulating floors, fitting heat pumps; and some would be very likely to unacceptably alter their character and appearance, e.g., solid wall insulation, solar panels, secondary glazing and would, in any case require Listed Building Consent.
- (d) One solution could be to appoint an accredited energy assessor who is also an accredited conservationist to carry out the EPC survey but not "lodge" the EPC on the Government database but rather advise on the recommendations and their suitability. Such professionals are rare, however, and there may be no other option than to obtain an EPC and try to obtain advice from the local authority Conservation Officer that the recommendations are not appropriate.

#### 16.8.9 High Cost Exemption:

- (a) The prohibition on letting property below an EPC rating of E does not apply if the cost of making even the cheapest recommended improvement would exceed £3,500 (including VAT).
- (b) If the 'high cost' exemption applies, the landlord must register this on the PRS Exemptions Register. To support this exemption, the landlord is required to upload copies of 3 quotations from different installers, each showing that the cost of purchasing and installing the cheapest recommended improvement exceeds £3,500 (including VAT); and confirmation that the landlord is satisfied that the measure(s) exceed this amount. The exemption will be valid for 5 years; after this time the exemption will expire and the landlord must try again to improve the property's EPC rating to meet the minimum level of energy efficiency. If this still cannot be achieved, then a further exemption may be registered.
- (c) This exemption should only be used where there are no improvements which can be made for £3,500 or less (and analysis suggests that the majority of EPC F and G rated properties can receive at least one improvement for this amount or less). If one or more recommended improvements can be made for £3,500 or less, and these improvements fail to improve the property to EPC E, then the 'All Improvements Made' exemption should be registered (see number 5) where all the "relevant energy efficiency improvements" for the property have been made but the property remains sub-standard.

#### 16.8.10 All Improvements Made' Exemption:

- (a) This applies where all the "relevant energy efficiency improvements" for the property have been made (or there are none that can be made) and the property remains sub-standard.
- (b) This applies to domestic and non-domestic property.
- (c) The requirement to meet the minimum level of energy efficiency (EPC E) does not apply where a landlord has made all the 'relevant energy efficiency improvements' that can be made (or there are none that can be made), and the property remains below EPC E (please see the

published guidance documents for the definition of 'relevant energy efficiency improvements').

- (d) If this is the case, the situation must be registered on the PRS Exemptions Register before the property can be let on a new tenancy (or to allow it to continue to be let after 1 April 2020 in the domestic sector, and after 1 April 2023 in the non-domestic sector).
- (e) Information Required: for an exemption of this type, the landlord may be relying on information contained within the property's EPC, which is one of the pieces of information which must already be uploaded to the Register for any exemption type. However, if a landlord is relying on information contained in a separate report, then they will need to upload a copy of this relevant report also to support the exemption.
- (f) Once registered, the exemption will last 5 years; after this time, it will expire and the landlord must try again to improve the property's EPC rating to meet the minimum level of energy efficiency. If this cannot be achieved then a further exemption may be registered.

#### 16.8.11 Commercial Dwellings and EPC:

- (a) From 1 April 2023, it will be an offence for a landlord to continue to let a sub-standard commercial property (i.e., any property with a valid EPC with a rating of F or G) without a legitimate reason.
- (b) The penalty for non-compliance will remain the same.
- (c) The legitimate reasons for continuing to let a property with an EPC rating of F or G include:
  - (i) The property remains sub-standard despite all the "relevant energy efficiency improvements" for the property being carried out (or that there are none that can be made); or
  - (ii) a valid exemption applies.

#### 16.8.12 The available exemptions include:

- (a) not being able to obtain consent from the tenant or a third party to do the relevant works (such as local planning authority);
- (b) the charity has carried out all the cost-effective improvements that can be made and the property remains below an E, or
- (c) the relevant works will devalue the property.

16.8.13 These exemptions are not automatic and require registration before the charity can rely on them. Exemptions need to be renewed at least every 5 years. If there is no valid exemption registered on the PRS Exemptions Register, you may be in breach of the MEES Regulations and there is a risk of fines of up to £150,000 in addition to other penalties so failure to comply could be costly.

#### Further resources:



- Government Guidance: [Green Deal: energy saving for your home](#)

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### CHECKLIST – BUILDINGS (REPAIR AND MAINTENANCE) AND FUNDRAISING

- ☒ Does the charity have a policy to delegate authority to deal with emergency repairs?
- ☒ Does the charity have to comply with the Value for Money standard?
- ☒ Does the charity have to comply with the Decent Homes standard?
- ☒ Does the charity always prepare a detailed specification before appointing a contractor?
- ☒ Does the Residents' Handbook contain the policy for dealing with repairs both urgent and non-urgent?
- ☒ Does the charity have a budget for cyclical maintenance work?



## GLOSSARY

Term	Meaning
ACL	Almshouse Consortium. <a href="#">See section 16.6.1(a)(ii).</a>
Almshouse	A unit of residential accommodation which belongs to a charity, is provided exclusively to meet the charity's purposes and is occupied or is available for occupation under a licence by a qualified beneficiary. <a href="#">See section 2.1.</a>
Almshouse Association	A membership organisation that supports almshouse charities and seeks to preserve the historic tradition of almshouses for future generations. <a href="#">See section 1.2.</a>
Beneficiary	An individual who qualifies to receive support from the charity. <a href="#">See section 2.1.3(b).</a>
Chair	The individual who chairs the meetings of charity trustees. <a href="#">See section 4.8.2.</a>
Charity	An organisation that is established for exclusively charitable purposes and which falls within the jurisdiction of the High Court in England and Wales. <a href="#">See section 2.2.</a>
CIO	Charitable Incorporated Organisation. <a href="#">See section 3.2.</a>
CIW	Care Inspectorate Wales. <a href="#">See section 14.</a>
Code	The Governance Code for charities. <a href="#">See section 4.13.</a>
Code of Conduct	A code of conduct in relation to behaviour and safeguarding. <a href="#">See section 6.2.7.</a>
CQC	Care Quality Commission. <a href="#">See section 14.</a>
Cyclical Maintenance Fund or CMF	A fund held for regular planned maintenance. <a href="#">See section 8.8.</a>
DBS check	A disclosure and barring service check. <a href="#">See section 5.2.6(c).</a>
Designated Land	Land that is held on trust to be used for particular purposes as set out in the trusts. <a href="#">See section 2.3.</a>
DPA 2018	The Data Protection Act 2018. <a href="#">See section 15.1.2.</a>
DPIA	Data Protection Impact Assessment. <a href="#">See section 15.9.</a>
EFR	Equivalent Fair Rent. <a href="#">See section 9.3.2.</a>
EPC	Energy Performance Certificate. <a href="#">See section 16.8.</a>
Ex-officio	By virtue of or because of holding an office. <a href="#">See section 4.3.9(a).</a>
Extraordinary Repair Fund or ERF	A fund held for major on-off repairs and improvements. <a href="#">See section 8.8.</a>
Fire Regulations	The Regulatory Reform (Fire Safety) Order 2005. <a href="#">See section 7.6.</a>



Term	Meaning
Functional permanent endowment	Land that is held on trust to be used for particular purposes as set out in the trusts. <a href="#">See section 2.3.</a>
Governing Document	The document or documents that govern the charity and set out the trusts, powers and regulations relating to the charity. <a href="#">See section 3.5.</a>
HHSRS	Housing Health and Safety Rating System. <a href="#">See section 7.5.</a>
Housing Health and Safety Rating System	A risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in residential dwellings. <a href="#">See section 7.5.</a>
HSE	Health and Safety Executive. <a href="#">See section 7.3.</a>
ICO	Information Commissioner's Office.
Letter of Appointment	The document that sets out the terms on which a resident is appointed to occupy the almshouse. <a href="#">See section 10.15.</a>
LIA	Legitimate Interests Assessment. <a href="#">See section 15.13.2(c)(iv).</a>
Licence	Permission to use premises for a particular purpose which, unlike a tenancy, does not create a legal interest in land. <a href="#">See section 2.4.7.</a>
PECR	Privacy and Electronic Communications (EC Directive) Regulations 2003. <a href="#">See section 15.1.2.</a>
personal data	Personal data is information that relates to a living individual who can be identified or is identifiable.
Permanent Endowment	Assets that are held by the charity (either capital or land) that cannot be spent or disposed of. <a href="#">See section 2.3.</a>
Protected characteristics	It is against the law to discriminate against anyone because of the "protected characteristics" which are age, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, disability, race (including colour, nationality, ethnic or national origin), religion or belief, sex or sexual orientation. <a href="#">See section 10.3.6.</a>
Public benefit	A purpose which is beneficial and benefits the public in general, or a sufficient section of the public. <a href="#">See section 2.2.6.</a>
Registered Provider of Social Housing	A housing organisation which is registered with the Regulator of Social Housing. <a href="#">See section 13.</a>
Registration Authority	CQC or CIW. <a href="#">See section 14.</a>
Regulated care services	<a href="#">See section 14.</a>
Rent Policy	The "Policy statement on rents for social housing" issued by the Ministry of Housing, Communities & Local Government. <a href="#">See section 9.6.</a>
Residents	Beneficiaries who occupy the almshouses. <a href="#">See section 2.4</a> and <a href="#">section 10.</a>



Term	Meaning
Residents' Handbook	A handbook setting out the policies and procedures to be followed by residents. <a href="#">See section 10.16.</a>
RIDDOR	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013. <a href="#">See section 7.18.</a>
ROPA	Record of Processing Activities required under Article 30 UK GDPR. <a href="#">See section 15.4.1.</a>
Scheme	A legal document issued by the Charity Commission or the Court which changes, replaces or extends the trusts of a charity. <a href="#">See section 3.6.3.</a>
SOFA	Statement of Financial Activities. <a href="#">See section 8.3.19.</a>
Specie Land	Land that is held on trust to be used for particular purposes as set out in the trusts. <a href="#">See section 2.3.</a>
Terms of Appointment	The Letter of Appointment as supplemented by the Residents' Handbook. <a href="#">See section 10.16.2.</a>
UK GDPR	UK General Data Protection Regulation. <a href="#">See section 15.1.2.</a>
Warden	An employee of the charity. <a href="#">See section 5.</a>
WMC	Weekly maintenance contributions. <a href="#">See section 9.</a>