



Trustee / Director Responsibilities

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Introduction

Over a million adults of all ages, social backgrounds and walks of life become trustees. Many people become involved in the running of a charity and thus become a charity trustee. Many trustees are unaware that they are trustees. Lack of knowledge about the duties and responsibilities of charity trusteeship may not just affect the way in which the charity is run, but can also have personal consequences for the trustees themselves. They may not be called by that name. Anyone responsible for controlling the management and administration of a charity are its trustees.

Who are the trustees of a charity?

Charities can be run in many different ways. This will depend upon the type of document that contains the rules for running a particular charity (the charity's governing document). The charity trustees are the people responsible under these rules for controlling the management and administration of the charity, regardless of what they are called. Here are some examples;

<u>Type of charity</u>	<u>Governing document</u>	<u>Usual title of the Charity Trustees</u>
Unincorporated association Or Society	Constitution or Rules	The Executive or Management Committee
Charitable Company	Memorandum and Articles Of Association	Directors
Charitable Trust	Trust deed or will	Trustees, Governors

A charity's **governing document** contains all the information needed to run a charity. A modern governing document usually includes:

- what the charity is set up to do (known as the objects);
- how the charity will do those things (known as powers);
- who will run it (the trustees)
- how it is run and what internal arrangements there are about meetings, voting, looking after money, etc (administrative provisions);
- what happens if the administrative provisions need to be changed; and
- what happens if the charity wishes to wind up.

For trustees to be efficient they should have a sound knowledge of their charity's governing document. Our Central register of charities can supply copies of governing documents.

What are custodian trustees?

A charity which is not incorporated (for example, a trust or an unincorporated association) cannot itself hold land or many types of investment, because it lacks what is called "legal personality". For this reason, its land or investments must be held by individuals or an incorporated body on its behalf. Some charities have custodian trustees. The job of a custodian trustee is very different to the job of the charity/managing trustee. The function of custodian trustees is simply to hold the legal title to the charity's property or investments. Custodian trustees have no role in the charity's management. They must act on the instructions of the charity trustees, unless they are told to do something that is not allowed by the governing document or by charity law.

Whether or not a particular charity has a custodian trustee simply depends on whether, when the charity was set up, the governing document appointed one. There are advantages of using custodian trustees; extra security against fraud as the funds are held by a third party, and, avoiding the need to transfer the assets each time the individual managing trustees change. A disadvantage is the fact that some custodian trustees (for example a commercial body such as a bank) may charge yearly fees.

If a charity holds land, and it does not have a custodian trustee, there is another way to avoid the need for new deeds to be made when the charity trustees change. Land can be vested in the Official Custodian for Charities. This is a member of staff at the Charity Commission who has been specially appointed in order to hold title to land on behalf of charities. Once we have made an order vesting the title to a charity's land in the Official Custodian, there is no danger that the charity land could remain vested in people who are no longer involved with the charity and who may be difficult to trace. Vesting in the Official Custodian simplifies the ownership of the charity land (such as selling or leasing it) and may make dealing with the land less troublesome and expensive. For example, in the case of unregistered land the number of deeds to be produced will be reduced and there will be no need to prove the deaths of previous trustees. The services of the Official Custodian for Charities are free. More information can be obtained by ringing our Official Custodian helpline on 020 7210 4646 or our leaflet CC13 "The Official Custodian for Charities' Land Holding Service"

Nominated Trustees

The trustees of a charity are the people who, under the charity's governing document, are responsible for the general control and management of the charity. Sometimes an individual is nominated by an outside organisation to be a trustee of a charity. The usual reason for this is to give a voice in running the charity to a member of a group which has an interest in its work, such as a user or a funder. For instance, some of the members of the committee of management of a village hall charity may be nominated by regular users of the hall such as a playgroup. The trustees of a recreation ground charity may include nominated trustees from sports clubs who use its playing fields. A local authority may want to nominate one or a number of trustees onto the governing body of a charity which operates in its area and for which it has provided funding.

So what is the difference between a trustee who has been selected by the trustees themselves (or elected by the members of the charity) and one who has been nominated by an outside organisation? The answer is "none". Nominated trustees may be appointed in a different way but they have the same legal duties and responsibilities as any other charity trustee.

Nominated trustees can be a valuable asset for a charity because they can bring an outside viewpoint to the charity preventing a trustee body from becoming too inward looking. However, nominated trustees will need to be aware that having two roles may bring conflicting demands, especially where the nominated trustee is also a member of the outside organisation that nominates him or her. For instance a trustee nominated by the local authority will need to recognise that the interests of the charity and its beneficiaries may not be the same as those of the local authority and its tax and rate payers. It is not the role of the nominated trustee to represent the interests of the organisation which nominated him or her. All trustees must act solely in the best interests of the charity.

Where a potential conflict of interest for a trustee arises on a particular issue, he or she should not take part in the discussions or vote on that issue. For example if you are a local councillor and also a trustee of a charity which is negotiating the sale of land to the local authority for development, you should not vote on the issue and should withdraw from any meeting at which the proposed sale is considered. You may also need to consider, with the

charity's legal advisers, whether on such a major issue we should be asked to authorise such a transaction. Without that authority, the presence on the trustee body of trustees with conflicts of interest may lead, in some circumstances, to the transaction being invalidated. The relationship between local authorities and local charities is more fully explained in our leaflet CC29 - Charities and Local Authorities.

Incorporation of Charity Trustees

The main advantage of incorporation is that the property of a charity is held in the name of the incorporated body of trustees. This avoids the need to draw up deeds transferring land or for transfers of investments to new trustees whenever new trustees are appointed. The trustees may also enter into contracts and sue and be sued in the name of the incorporated body.

Provisions on the incorporation of charity trustees contained in Part VII of the Charities Act 1993: -

- apply to all charities;
- allow us to grant a certificate of incorporation of the trustees of a charity as a body corporate if we consider that incorporation of the trustees would be in the interests of the charity;
- allow us to include in the certificate of incorporation such conditions or directions as we think fit;
- require us to keep a record of all applications for, and certificates of, incorporation and to make documents available for public inspection;
- set out how documents may be drawn up by the incorporated body of trustees, including the use of a common seal if the incorporated body of trustees chooses to have one;
- allow us to amend a certificate of incorporation either on the application of the trustees or, under certain circumstances, with or without an application from the trustees; allow us to dissolve an incorporated body of trustees either on the application of the trustees or, under certain circumstances, with or without an application from the trustees.

We take the view that incorporation of trustees under Part VII of the 1993 Act (unlike incorporation of the charity as a company under the Companies Acts 1985 and 1989) does not confer limited liability on trustees. They retain the same powers and remain subject to the same restrictions and liabilities as before.

Further details regarding the incorporation of trustees can be found in our leaflet CC43 - Incorporation of Charity Trustees .

Disqualified - Can anyone be a trustee?

Generally speaking anyone who is 18 years or over can be a trustee. However, certain people are legally disqualified from continuing to be, or from becoming a trustee. Obviously this will only effect a small minority of people. People who are disqualified are those who

- have been convicted at any time of any offence involving deception or dishonesty, unless the conviction is legally regarded as spent; or
- are undischarged bankrupts; or
- have made compositions or arrangements with their creditors from which they have not been discharged; or
- have at any time been removed by the Commissioners or by the court in England, Wales (or by the Court of Sessions in Scotland) from being a trustee because of misconduct; or

- are disqualified from being company directors; or
- are subject to an order made under s. 429(2) (b) of the Insolvency Act 1986.

Appointing a Trustee

The Charity Commission knows that it can be a difficult task for charities to find and train new trustees. However, we believe that carefully choosing and training your trustees will help your organisation run more efficiently and effectively. Being a charity trustee is both demanding and worthwhile. Trustees must be selected for what they can contribute to the charity. They should not be appointed for their status or position in the community alone. Trustees must be able - and willing - to give time to the efficient administration of the charity and the fulfilment of its trusts. They should be selected on the basis of their relevant experience and skills and must be prepared to take an active part in the running of the charity. They can be users of the charity services if arrangements are made to avoid conflicts of interest such as trustees voting for something from which they will personally and directly benefit.

What skills are needed from the new trustee?

Prospective trustees should be selected for their ability to make an effective contribution to your charity in terms of skills and experience.

Firstly you should consider the current skills on your trustee body. It is a good idea to assess the skills and experience you currently have on your trustee body. You should count skills such as the ability to organise fund-raising events; bookkeeping; or management skills. A person's experience of working for another charity will be valuable, as will the experience of someone who has been in the same position as the users of your charity's services or who is a user and who fully understands their needs.

Secondly, you should assess what skills are lacking from the trustee body. You can then set out a list of skills that you would want from a new trustee. Some of the skills may be essential whereas others may be just desirable. A number of charities have drawn up a job description for a prospective trustee like they would for staff.

Thirdly, you may wish to consider the current balance of your trustee body. It can be very useful to have a diverse board in terms of age, sex, race, background and skills. If your charity has an equal opportunities policy it should apply just as much to the trustees as it does to staff.

How do you find a new trustee?

Once you have agreed on the skills you are looking for you can start drawing up a list of possible candidates. The traditional method of recruiting new trustees has been by word of mouth. People recruited in this way are often known to existing trustees. However, one of the disadvantages of this method is that you may recruit to type. This method also restricts the field from which trustees can be drawn.

You could consider approaching local firms of accountants or solicitors, and asking local businesses whether they have people with the willingness and ability to act as trustees for your charity. You could also approach other charities who may have ex-trustees whose term of office has expired.

The National Council for Voluntary Organisations (NCVO), telephone 020 7713 6161 maintains an index of organisations which offer trustee-finding services.

Some charities have used other methods to try to find new trustees. An example of this is advertising for trustees in the press. Advertising can be a particularly effective way of

reaching a wider group of people and you can specify in advertisements the particular skills you would like in people applying to be trustees. However, advertising is a costly way of finding new trustees.

You might like to consider holding a charity open day where you can show potential trustees what your charity does.

How do you know whether someone is suitable?

It is important to make potential trustees aware of their duties and responsibilities but at the same time not to be too discouraging. You should also make clear to people the amount of commitment involved in being a trustee, including the average amount of time that you would expect them to spend on to the charity each week or month.

When you have found one or a number of possible recruits you will need to consider whether their skills match the requirements of your charity. The person or persons concerned will also need to judge whether you are a suitable organisation for them. You could refer to your original specification of the skill requirements that you have for a new trustee or trustees.

There are certain people who are disqualified from becoming a trustee of a charity. You will need to check that the person that you select does not fall into one of the disqualified categories.

You will also need to make sure that the potential new trustee does not have any personal or business interests that might conflict with the charity's interests.

Appointing the new Trustee

After you have selected your new trustee, he or she must be formally appointed. The way in which trustees should be appointed will be set out within your charity's governing document. New trustees should sign the charity's minute book to show that they accept their appointment and are aware of their duties.

Induction for a new Trustee

Existing trustees should ensure that new trustees have a clear understanding of the work of the charity and what will be expected of them. You should provide them with a copy of the charity's governing document. It would also be helpful to provide copies of the latest annual report and give details of the property (such as buildings) and other resources (such as investments) that belong to the charity. The new trustee should be introduced to the original trustees and should be given an opportunity to ask about the charity's activities and funding.

As a general rule decisions concerning the charity must be taken by the trustees acting together. As a trustee body you should ensure, where property of the charity is held in the names of individual trustees, that all the property of the charity is transferred into the names of the people who are the charity trustees at the time.

What help can the Charity Commission offer to a new trustee?

The Charity Commission provides guidance and information to trustees. The duties and responsibilities of trustees are fully explained in our leaflet Responsibilities of Charity Trustees (CC3). This leaflet also explains who is disqualified from acting as a trustee. We suggest that every new trustee should read this leaflet carefully before or on appointment. We also produce a summary leaflet (CC3a) which can be kept by trustees personally.

We also organise regional surgeries where staff from the Charity Commission are available to talk to charity trustees on a whole range of issues including trustee responsibilities. The surgeries are organised in association with local Councils of Voluntary Service and other co-ordinating bodies.

Ending Trusteeship

Introduction

Trusteeship may come to an end for a number of different reasons. The period for which the trustee was appointed may expire. Trusteeship may be tied to an office or personal qualifications and lost when the trustee ceases to hold them. In addition a trustee may resign, retire or be removed from office. A charity's governing document may give an explicit direction as to the circumstances in which the trusteeship will end. If not, general trust law applies.

When can an individual be removed from acting as charity trustee?

A charity may have provisions in its governing document which state the circumstances in which trustees can be removed. For instance the governing document may specify that the trustees can remove a trustee if he or she consistently fails to attend meetings.

If the governing document is silent, the law provides that a trustee can be replaced on the appointment of a new trustee in their stead:

- Following the trustee's death.
- If they have been absent from England and Wales for an unbroken period of 12 months.
- If they refuse to act
- If they are considered incapable or unfit to act as a trustee. For instance if he or she is of unsound mind, or is seriously ill enough to not be able to conduct their affairs or if it is discovered that they are legally too young to act as a trustee or have become bankrupt.

In certain circumstances a person is disqualified (in law from acting as a trustee. It is important that a charity carries out a check to ensure that none of the existing trustees are disqualified under the provisions of the Charities Act 1993. The Act sets out in full the circumstances in which a person is disqualified from acting as a charity trustee or trustee for a charity unless we waive disqualification. The following are some examples:

- a person convicted of a criminal offence involving dishonesty or deception
- a person who has been adjudged bankrupt or who has had their estate sequestrated
- a person who has made a composition or arrangement with their creditors and has not been discharged
- a person who has been removed from being a charity trustee by one of our orders and the reason for removal was their misconduct or mismanagement
- a person disqualified from acting as company director.

We can remove a trustee if we have instituted an inquiry and we are satisfied that there has been misconduct or mismanagement in the administration of the charity and, in broad terms, that we need to act to protect the charity's property or ensure that the property is properly used.

When should a trustee retire?

There are a number of circumstances in which someone may retire from a charity:

- a trustee may decide to retire;
 - they may have reached a retirement age which is set out in the governing document;
- or

- the other trustees may for good reason conclude that it is the charity's best interests for someone to retire.

If a trustee decides that they wish to retire they should tell the remaining trustees. The trustee should write to the chair, unless it is specified otherwise in the governing document, notifying them of their intentions. It is good practice to give fellow trustees adequate warning so that they can find a replacement. A trustee may be able to retire without a replacement being appointed but this will depend on the provisions in the governing instrument. There is the normal basic rule that a trustee may not resign unless there will be at least two trustees left to carry on. Under the general law, the trustees can appoint a replacement for a trustee who wants to retire. But allowing a trustee to retire without a replacement is not ideal since it is important for every charity to be equipped with the right efficient and effective trustee body.

It can be difficult to recognise when it is the right time for a fellow trustee to stand down and when to tell them. For instance there can be a problem with trustees who have served for long time. Occasionally they may not adapt well to legitimate changes within the organisation or be willing or able to take them forward. Again, a trustee may simply become too infirm to continue but not be able to bring themselves to give up trusteeship. However, for charities to run effectively it is important that trustees as a whole recognise that it may be time to request that someone retires from office. If the trustee concerned is not prepared to retire voluntarily, then the trustees will have to consider whether they have the grounds for removal. To avoid such a situation arising it is advisable to have a set some term to trusteeship and state that in the governing document (together with a re-election procedure). It is important for all trustees to consider on a regular basis, say once a year, whether they are still contributing effectively to the charity and whether it is appropriate for them to retire.

How does a trustee resign?

There may be provisions in the governing document to cover the resignation of a trustee and the appointment of a successor. If there are not, then the law provides that where a trustee wants to be discharged from his duties, the remaining trustees can appoint a new trustee in his or her place. Basically, therefore, you can resign at any time although you should make sure that you give sufficient notice to the remaining trustees.

It is important that a charity maintains a balance between existing experience and new recruits.

A charity can consider devising a rota of resignations and successions to allow for experience and to prevent a vacuum from developing. This rota system is particularly suited for charities that appoint their trustees by elections which are contested each year. Any rota system must not be inconsistent with any existing provisions either in the governing document or in law, and it may be necessary for the trustees to consider amending the governing document in some cases. A fixed term of office, of for instance a period of 3 years, can be included as a provision within a governing document.

What should the remaining trustees do when a trustee leaves office?

Where the trustees of a charity hold property in their own individual names, it is particularly important to ensure that such property is transferred into the sole names of the continuing trustees since this will not be automatic but needs some further action taken. The procedure for effecting such a transfer will either be set out in the governing document or in the general law.

The remaining trustees will now have to consider the terms of the governing document and then, as appropriate, carefully choose, appoint and train a new trustee.

Trustees' Liability

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Introduction

Some charity trustees, and people thinking about becoming trustees, are nowadays influenced by the thought that they might be "personally liable" if things go wrong with the charity. What they fear is that, if they make a mistake in the running of the charity or if it gets into debt, they might have to make good any loss or shortfall out of their own private resources. While for a few people this can be a real worry that leads them to resign their trusteeship, it is in fact extremely rare for a trustee to be made "personally liable" in this way. Generally the law protects trustees who have acted reasonably from the consequences of honest mistakes, and trustees can take their own measures to reduce the risk still further.

Our leaflet CC49 - Charities and Insurance describes the range of different types of insurance, including indemnity insurance, that trustees will need to consider taking out.

Contractual Liability

Many charities need to enter into contracts in order to carry out their work. Most commonly, charities enter into contracts with suppliers of goods or services. This can range from an agreement with a local shop to photocopy the charity's newsletter to a multi-million pound contract for the purchase or construction of new premises for the charity. If the charity is an incorporated charity - a charitable company - then the contract is between the charity, as a legal entity in its own right, and the supplier. Since it is the charity, and not its trustees personally, who are party to the contract the trustees have no personal liability under the contract. (That said, directors of a company may be ordered by the Court to contribute to the company's assets in some circumstances if the company continues to trade after it has become reasonably clear that the company is heading for insolvency).

By contrast, unincorporated charities - mainly trusts and associations - do not have their own legal personality and it is the individual trustees rather than the charity who are party to the contract. Provided that they acted properly in entering into the contract they can of course use the charity's resources to meet their obligations under it. But if the charity does not have enough funds to meet these obligations then the liability to do so remains with the trustees personally.

Because the trustees of a charitable company are less exposed than the trustees of a trust or an association to personal liability arising under a contract, some charitable trusts and associations think about converting themselves into charitable companies.

For a charity that regularly enters into large contracts this might well be an appropriate move. But trustees considering it should be aware that becoming a charitable company will bring the charity within the scope of company law, which imposes its own range of extra duties and expense. We advise that trustees take professional advice, from someone knowledgeable about both charity and company law, before deciding whether or not to convert their trust or association into a charitable company.

Trustees of unincorporated charities can sometimes put themselves on a similar footing to charitable companies, by making it a term of any contract they enter into that their liability under the contract will be limited to the value of the charity's assets. This means that they will

not incur any personal liability if the charity's resources are not large enough to meet the trustees' obligations under the contract.

Liability for breach of trust

All trustees must administer their charity in accordance with the terms of its governing document (i.e. its constitution, trust deed, or memorandum and articles) and with the requirements of charity law. A charity's governing document sets out the charity's objects and powers that the trustees can exercise in pursuing those objects. A breach of trust occurs when trustees act in a way that is contrary to the terms of their governing document, or when they fail to perform their duties as trustees. Using the charity's resources for some purpose not within the charity's objects (what it has been set up to do) is a breach of trust as is, for instance, investing the charity's money in a type of investment not permitted under the investment rules applying to the charity. Our leaflet CC14 Investment of Charitable Funds: Basic principles looks at investment rules in more detail.

When trustees commit a breach of trust which results in some financial loss to the charity, they become liable to make good that loss.

Trustees who are familiar with the contents of their charity's governing document, and who have acquired a reasonable knowledge of the law as it applies to their charity, are very unlikely to commit a breach of trust. Trustees can reduce the likelihood even further by taking and following professional advice or consulting us on any point on which they are unsure. In the last resort, the Court is able to excuse a trustee from liability if it is satisfied that he or she acted honestly and reasonably and ought fairly to be excused.

Some trustees think of taking out indemnity insurance (sometimes called "liability insurance") to protect themselves from personal liability arising from any breaches of trust. Our leaflet CC49 Charities and Insurance looks at liability insurance in detail. In appropriate cases charity funds can be used to pay for trustee indemnity insurance either directly or by reimbursing the premiums. Since the trustees will be conferring a benefit upon themselves if they use the charity's funds in this way, they will need authority to do so. Unless the charity's governing document already contains a provision expressly allowing the trustees to use the charity's funds to pay for indemnity insurance, they will need to ask us to give them the necessary authority.

When considering whether providing indemnity insurance at the charity's expense is appropriate, trustees should take into account:

- the degree of risk to which they are exposed;
- the value of the indemnity required;
- the cost of the insurance premiums; and
- whether the insurance is in the interests of the charity.

Where indemnity insurance is taken out, the policy must include an exclusion clause on the following lines:

"The Insurers shall not be liable for loss arising from any act or omission which the trustee knew to be a breach of trust or breach of duty or which was committed by the trustee in reckless disregard or whether it was a breach of trust or breach of duty or not".

Other types of liability

Charities are no different from other organisations in the duty of care owed to their employees and to members of the public visiting charity's premises. Charities that employ staff are required by law to have employer's liability insurance, and charity vehicles must be insured in accordance with the legal requirements.

Trustees have a duty to safeguard the property of their charity, and it is important that they insure it adequately. If they do not do so, and the property is lost or devalued, the trustees may be personally liable for the loss.

Powers of Trustees relating to Amendments and Borrowing

Amending a Governing Document

Why change the governing document?

A charity's governing document may need to be altered because:

- the charity can no longer pursue its original aims effectively or in a way which is actually helpful to the public in contemporary circumstances; or
- the administrative provisions contained in its governing document need to be modified to enable the trustees to pursue their aims effectively or with greater efficiency.

Amending a governing document is subject to certain restrictions which apply to all charities. For example, there are rules stopping charities from making any alteration which would change them into organisations which would not be formally recognised as charitable.

How can charities make alterations?

It is important that any amendment is valid and trustees are therefore strongly recommended to seek our advice in the event of any doubt as to the effect of the proposed alteration

- Unincorporated charities

A governing document may contain a clause giving the trustees a "power of amendment". If so, changes may be made in line with this clause without reference to the Charity Commission.

In many cases however the "power of amendment" clause will impose further restrictions. For example, changes to key provisions (including a charity's objects) may require our consent. The amendment clause will also set out the procedure for implementing the change. For most unincorporated associations the usual requirement is for a resolution to be passed at a general or special meeting of the charity.

- Charitable Companies

Companies have the power, under the Companies Acts, to amend their memorandum and articles of association (the governing document). The procedure is contained in company law and will usually be reflected in the articles of association. However the trustees or directors of charitable companies must obtain our prior written consent before passing any resolution which changes the charity's stated objects or the way in which its property may be used or applied.

- Small Charities

If a charity has a gross annual income below £5,000 and does not own any land which is used for any or all of the charity's purposes the trustees may be able to use the provisions of section 74 of the Charities Act 1993 to amend the trusts. Our leaflet Small Charities Transfer of Property Alteration of Trusts Expenditure of Capital CC44 looks at this in detail. Charities can ring for advice and information on Small Charities on: 0870 333 0123 or 0870 333 0125 (minicom).

Finally if none of the above options apply; any changes to the governing document will have to be made by us. We will, if we agree to the changes, make a Scheme. A Scheme is a legal document by which we may amend, replace or amplify a charity's governing document.

A Scheme can be used to change both the administrative provisions, for example the composition of the trustee body, and to amend what the charity is set up to do. Our leaflet on this subject, Making a Scheme CC36 looks at this in more detail.

Alternatively, we may decide that it is appropriate to make a Scheme giving the charity a power of amendment.

Borrowing Money

Introduction

When a charity wants to borrow money the trustees must first be satisfied that they have the power to borrow. There may be a specific power in the governing document, or if the charity is unincorporated, they may have a statutory power under the Trusts of Land and Appointment of Trustees Act 1996. If the trustees are not sure whether they have the appropriate power, they should contact us as we may need to make a scheme to give the charity power to borrow. If the trustees have the necessary power, they should then obtain and consider the advice of someone with the ability and experience in financial matters. This advice must be considered at a properly constituted trustees meeting. If a meeting is not possible then the trustees may consider the advice between themselves in correspondence or orally. If oral approval is given a written record should still be made of the decision. All trustees should be a party to the decision; and they should be clear that the purpose of the borrowing is the furtherance of something within the objects of the charity.

If charities need advice on borrowing they should contact the appropriate Charity Support Section at one of our three offices.

Mortgages and unsecured loans area are the two ways in which a charity can usually borrow money.

Mortgages

Trustees may, without our consent, grant a mortgage over charity land as security for the repayment of money they have borrowed. If the mortgage is for any other purpose then our consent will be needed. There are however requirements that have to be met before trustees can borrow without our consent.

They must first be satisfied that they have a power to mortgage. Trustees must then obtain and consider the advice of someone they reasonably believe is qualified by his or her ability in and practical experience of financial matters. The person concerned can be an appropriate officer or employee of the charity, but must not have any financial interest in the making of the loan. This advice must be in writing and cover three matters:

- Whether the loan is necessary to enable the trustees to carry out the particular course of action in connection with which the loan is sought.
- Whether the terms of the loan are reasonable.
- Whether the charity can repay the loan in the agreed terms.

A full explanation and the procedure that trustees need to follow can be found in our leaflet Disposing of Charity Land CC28.

Unsecured Loans

Where trustees take out a loan such as an overdraft which is not secured by a mortgage over charity property they should ensure that their charity has power to enter into the loan agreement and sufficient assets to discharge the loan if the charity suffers a sudden loss of income. As with any form of borrowing trustees should seek professional advice before taking out an unsecured loan.

REAP is both a Registered Charity and Company Limited by Guarantee.

'CC3 – Responsibilities of Charity Trustees'
The Charity Commission, 2002