

## OPERATIONAL GUIDANCE

### MANAGEMENT OF VILLAGE HALLS

#### VILLAGE HALL TRUSTS, COMMON DIFFICULTIES WITH THOSE TRUSTS AND HOW TO RESOLVE THEM

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**Purpose** This guidance gives details of the model trust deeds and model Scheme available for village hall charities. It also explains how deficient trust deeds may be rectified and highlights problems incurred with non-model deeds.

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### **1. Governing documents**

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#### 1.1 Model trusts

The majority of village halls are settled upon

- model trusts set out in standard governing documents produced by ACRE; or
- a Scheme of the Commissioners which has replaced the original governing document.

Model trust deeds for village halls have existed for about sixty years and were originally issued by the National Council for Voluntary Organisations. In 1987 the

copyright was transferred to ACRE (Action with Communities in Rural England). The models have been revised and updated as legislation has changed. The latest revisions were made in 2000 and superseded all previous models. The models available from ACRE are:

- model A - suitable for freehold property; and
- model B - suitable for leasehold property.

The Commissioners have a model Scheme (model V1) which is intended for existing halls where they are unable to work under outdated governing documents. However, considerable care should be taken where a charity indicates an intention to adopt a model in place of an existing governing document. The governing documents of some village hall charities will contain a suitable power of amendment, but many will not. The adoption of the model may then either be legally ineffective, or it may have the effect of creating a second charity connected with the village hall. In either case there is likely to be confusion as to the basis upon which the village hall is in fact being managed. When such situations occur we need to bring it to the charity's attention and try to regularise the position. We will also need to point out the registration and accounting consequences, ie that a second charity would need to be registered and have separate accounting arrangements.

## 1.2 Other governing documents

Some village halls, particularly those established before the 1950s, may not have standard trusts. Whilst this may be the case it does not always mean that the trusts are defective. They may be exclusively charitable and cause no problems for those administering the charity, in which case there is no reason why they should be changed. See [section 2](#) below for action to be taken where the trusts declared are not charitable.

## 1.3 More than one governing document

Some village halls may have two separate documents, one which declares trusts over the land and buildings and the other which establishes a constitution for its administration and management.

In most cases the land and buildings will simply be held by individuals (or by the Official Custodian or by a Parish Council) acting as nominee/custodian trustees of the village hall charity. However, problems may arise where the conveyance or lease also gives certain administrative powers to individuals who are a distinct body from the committee who is actually managing the village hall, for example in relation to sale. In those cases, those individuals will be more than mere nominees. It is important to clarify who the charity trustees are in each case and

what their powers are

If any doubts arise as to the powers and duties arising from the respective governing documents, legal advice should be sought.

It will be rare for there to be more than one charity (as distinct from more than one governing document) associated with the operation of a village hall. But it is possible that the land on which the village hall is built is held by Charity A on trust to allow the village hall to be managed by the committee of management of Charity B. Generally such charities should be registered separately, and should account separately - although they are both associated with the same service, there will not typically be the degree of administrative interdependence to permit one to be treated as a special trust of the other.

#### 1.4 Miners' Welfare Associations or Schemes that have become village halls

Another irregular instance can be where a Miners' Welfare Association or Scheme has drifted into becoming a village hall without actually formalising the arrangement. This can amount to a serious breach of trust as the trusts of miners' organisations are not the same as village halls. Further issues can arise where the Miners' Welfare Association or Scheme runs a bar which continues to be run in the village hall.

Where issues arise with Miners' Welfare Associations legal advice should be taken.

## 2. The Charitable Trusts (Validation) Act 1954

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#### 2.1 The provisions of the Act

The Act applies to imperfect trust provisions which are defined in **section 1(1)** of the Act as:

*"any provision declaring the objects for which property is to be held or applied and so describing those objects that, consistently with the terms of the provision, the property could be used exclusively for charitable purposes, but could nevertheless be used for purposes which are not charitable"*

In practice this means that the Act is applied where trust property has been used exclusively for charitable purposes, but where the objects declared in the charity's governing document allow use for non-charitable purposes. The Act is not applied if the trust is a valid non-charitable trust (for example, if the trusts as a whole

indicate that property is held for the benefit of the members of a non-charitable drinking club). Nor is it applied if the actual use of the premises is non-charitable (from which it will usually be inferred that use for *exclusively* charitable purposes would not have been consistent with the terms of the provision). Where the Act does apply it has the effect of removing the non-charitable provisions of the governing document which would otherwise have the effect of making the trust void.

## 2.2 Application of the Act in respect of village halls

The model deed upon which the trusts of many village halls were based contained references to the provision of a village hall for the purpose of promoting "social, moral or intellectual development" or "entertainment". Where trust deeds contain such wording it casts doubt on whether the objects are exclusively charitable and as such the provisions may represent "an imperfect trust provision" for the purpose of the 1954 Act.

The question of whether an imperfect trust exists depends upon the precise wording used therefore the advice of a Legal Officer should be sought. Legal officers may wish to refer to **Ulrich and Others v Treasury Solicitors and Others** [2005] EWHC 67. This case considers that an express reference in the trust provision to a charitable purpose is not necessarily required.

In practice this question is normally raised where we are about to register a village hall which has been operating for some time, with an old trust deed, but failed to become registered. Occasionally we find village halls that have been registered still contain the type of provisions mentioned above. It is important therefore, that when dealing with village halls we should examine the trusts as a matter of routine and consider whether the steps outlined below can properly be used to rectify this position.

## 2.3 How we apply the Act

The Act only applies to trust provisions created before **16 December 1952**.

Whether cases arise in Registration Division or Charity Services, a referral should be made to a Legal Officer asking whether the Act can be applied in the particular case and giving details of how the charity operates.

Where the legal officer determines that:

- the Act does apply; and
- the application of the Act would be consistent with the way the charity operates;

then he or she will direct that the institution should be registered, or the existing Register entry amended, and also indicate the wording of the charitable objects that should be placed on the Register.

However, **before** registration or amendment takes place we must get the trustees' agreement to the application of the Act and for the wording of the objects. That agreement must be in writing.

In the unlikely event that agreement cannot be reached the case should be referred again to the Legal Officer.

Once registration has taken place a note will need to be placed with the governing document on the Central Register file to confirm that the Act has been In some cases the application of the Act may result in objects which give rise to confusion within the charity or would not be consistent with the way in which the charity operates. In such cases it may be appropriate to offer a Scheme to clarify the trusts. The Legal Officer's views will need to be set out fully so that a decision can be taken within Charity Services (at PB5 level) of whether a Scheme should be offered to clarify the charity's objects. applied and how it affects that document.

Where we decide that a Scheme should be offered we should write to the trustees explaining:

- that the objects in their governing document are not wholly charitable as they stand; and
- that we can apply the Act (in effect this means striking out words) but by doing this the object can become muddled or unclear, and therefore, for the purpose of clarity, a Scheme may be appropriate.

Our letter should set out proposals for the Scheme. In addition to consideration of the objects, we should take this opportunity to look at other provisions of the governing document that could benefit from being modernised in the Scheme.

Once the Scheme is agreed and made the case can then be referred for formal registration or amendment of the Register.

Where, on the basis of legal advice, the Act can be applied but Charity Services take the decision not to make a Scheme, agreement will still need to be reached with the trustees about the wording of the objects. Once this is achieved the case can be referred for formal registration or to the relevant person for amendment of the Register; this referral will need to include the wording for the revised objects.

If doubts arise as to the validity of a governing document taking effect after 16 December 1952 that matter should be referred to a legal officer.

### **3. Repeal of certain provisions for appointing trustees in Schemes and deeds**

## (Abrogating Schemes)

### [3.1 Provisions that require amendment](#)

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#### 3.1 Provisions that require amendment

[OG 68 B2](#) gives general guidance on the composition of the management committee, whereas this section looks specifically at provisions that require amendment.

Very occasionally, some of our older Schemes provide that:

- the appointment of co-opted trustees (sometimes called non-official trustees) shall only be provisional until such time as they have been given our approval.

Additionally, model deeds for village halls made prior to 1968 provide that:

- a resolution of the committee of management allowing an additional organisation to appoint a representative member was not effective until it had been approved in writing (or sometimes by order) by the Minister of Education (whose function in this respect passed to ourselves in the early 1970's).

These provisions could have an adverse effect upon the make up of the management committee. This typically happens where there has been a failure to get co-opted trustees approved or where new organisations have appointed members to the committee without authority to do so. In reality this might mean that individuals are acting without proper authority or the committee may not have a proper balance between appointed and elected members, which in turn could have a detrimental effect on grant applications. Grant givers are keen to see that the people from the area of benefit who use the hall have a proper say in its running.

It has long been our practice to dispense with the need for us to approve appointments or resolutions when they appear in a Scheme or a deed. This is done by means of a Scheme known as an Abrogating Scheme or occasionally by supplemental order where the governing document allows.

However, before offering to make such a Scheme we will need to consider whether any other provisions in the existing governing document need to be altered or brought up to date, for instance:

- whether there is a functioning and properly appointed body of trustees as provided for in the governing document; and

- whether the objects are up to date or are still capable of being carried out fully.

Where there are insufficient properly appointed trustees to apply for a Scheme we will need to consider whether we should accept the application in line with **section 16(7)** of the **1993 Act** or whether we should take action to reconstitute the trustee body.

Where the objects are not capable of being carried out we will need to consider, in conjunction with the trustees, the reasons for this and whether a cy-près Scheme is necessary. There may be a need for our own model village hall Scheme, which will allow for changes to the composition of the committee.

### 3.2 Where amendment is not usually required

Village hall charities usually keep a schedule of organisations who are allowed to appoint members to the management committee. Trust deeds or model schemes can give power to make appointments for new organisations but not always to remove defunct organisations from that schedule. Trustees sometimes ask us for a Scheme, for reasons of neatness, to remove organisations which are defunct. In these circumstances **alone** we would not wish to offer a Scheme; the organisation concerned will no longer be able to appoint a trustee and it is not therefore of concern that it still appears on the list of appointing organisations. However, where there are difficulties with management committee composition that affects the running of the hall or the ability to obtain grants we would certainly give consideration to a Scheme.

## 4. Use of church halls for village hall purposes (Albemarle Schemes)

In some areas, where no village hall exists, there may be an existing church hall which is used on an infrequent or irregular basis. Local inhabitants may often want to use it as a village hall. Because the nature of the trusts of a village hall is clearly different from the explicitly ecclesiastical nature of a church hall, it is not possible for the church hall simply to operate as a village hall. However, we are able to authorise the use of a church hall for use as a village hall under what is known as an "Albemarle" Scheme. Such a Scheme will authorise a lease of the property to a village hall charity but with user rights reserved to the church hall charity. The village hall charity will normally be responsible for the repair and maintenance of the property under the lease and the rent payable will be reduced to reflect this.

The village hall charity, once established, will operate as a typical village hall. Caseworkers must be clear when dealing with halls which are used under the terms of an Albemarle Scheme about the identity of the particular charity which is approaching us. The concerns of the church hall charity and the village hall charity will obviously be quite different and it is important to be clear as to the trusts to

which any inquiry relates.

In some situations it is possible that the village hall charity is already established before the move to church hall premises which means it will already have a governing document. In these circumstances a lease is required allowing the village hall to use the premises for its purposes, rather than setting the charity up by means of the lease. Care will need to be taken to ensure that the trusts stated in the lease concur with those of the trust deed so that a separate trust is **not** set up, as in the circumstances described at [section 1.3](#) above.

Where a new village hall charity is being formed this will normally be by means of the ACRE "model B" lease. This lease can only be made, of course, after the Albemarle Scheme has conferred on the church hall trustees a power to lease the premises.

Additionally, the village hall charity will need to recognise that if the church hall no longer has need for the hall for its own purposes then the trustees of that charity are under a duty to sell the hall for the best possible price, which might not always be to the village hall charity.

The use of church halls for village hall and other purposes is discussed at length in our leaflet [CC18](#)

## **5. Village halls and recreation grounds**

Occasionally we are approached with a view to amalgamating a recreation ground charity with a village hall charity. This might occur where the two charities have adjacent land, where the equivalent of a village hall has developed (without formal permission) on a recreation ground or perhaps where trustees think it might be a good idea to put a hall on a recreation ground.

Whilst we have a model Scheme for a joint village hall and recreation ground we need to consider carefully the respective trusts, and how they will be managed in a practical sense (eg whether separate financial and administrative arrangements would be appropriate), before the charities go down the route of amalgamation. We also need to ensure that the trustees understand what they can or cannot do within the scope of their respective trusts and that any amalgamation will need to be in the best interests of both charities. Occasionally we may encounter circumstances where a village hall and recreation ground cannot be merged because of unusual provisions in a governing document that cannot be removed. Consequently we may keep the charities separate but give them a common committee of management.

Recreation grounds by their very nature provide open space for outdoor recreation. They will need to show that the land intended for a village hall would be surplus to requirements of the recreation ground and that its charitable activities were not put at risk by such a building. Alternatively, from a village hall perspective they will need



to ensure that their activities were not disadvantaged by amalgamating with a recreation ground.

Provided that the amalgamation will not be to the detriment of either charity's interest we should take a positive view of this type of amalgamation. The scope of s13(1)(c) of the Charities Act 1993 will allow for an amalgamation where the charities involved can show a more effective use of charity resource, having regard to the original gifts and applying to common purposes.