

Briefing Note

At the last Board meeting on 12th December 2017 there was discussion at the Board centred around your powers and what you could make decisions on and it was agreed that I would produce a Guidance document.

This Guidance is circulated. Like any Committee etc. of the Council, you can only make decisions in accordance with the Terms of Reference of the Board and the Terms of Reference is the Governing Document. Paragraph 2 of and Appendix A of the Guidance relate to that document.

There is no difference your their making decisions as Councillors or making decisions as trustees. Paragraphs 3 and 4 of the Guidance sets out your duties as trustees and your decision making powers as trustees and which are analogous with your duties as Councillors, e.g. making balanced and adequately informed decisions; avoiding conflicts with personal interests; fiduciary duty etc. The Guidance merely puts those duties in the context of your being trustees rather than Councillors.

The only difference in decision making would have been where the obligations to which the Board is subject are different to the obligations of the Council. As the Council is the trustee however, there should be no conflict of obligations.

The “Protocol For Councillors, Officers And Individuals Appointed Or Nominated By The Council To Outside Bodies” and is scheduled to go to GP Committee in February and this Guidance has been drafted so that it is consistent with that updated draft. It is likely therefore that this Guidance may be updated further and once finalised, will be presented to the Board.

Paul Greeno
Senior Corporate and Governance Lawyer
Legal Services
9th January 2018

**LONDON BOROUGH OF TOWER
HAMLETS**

**GUIDANCE FOR COUNCILLORS
APPOINTED TO THE KING GEORGE'S
FIELD CHARITY BOARD**

1. Introduction

- 1.1 The Council is the Trustee of the Mile End Charity pursuant to the Governing Document which is a Scheme dated 28th February, 2000. The Council is also the Trustee for Tredegar Square with the Trust deeds. The Council's Constitution establishes the King George's Fields Charity Board ('the Board') to administer the charities affairs and discharge the Council's trustee functions.
- 1.2 This document sets out guidance for the Mayor and Councillors ('Board Member') who are appointed to serve on the Board.

2. The Governing Document

- 2.1 On 28th February 2000, the Charity Commissioners for England and Wales approved a specific scheme for the administration of the King George's Field Mile End Charity ("the Scheme"). A copy of the 2000 Scheme is included as Appendix 1. The Scheme expressly provides that it replaces the existing trusts of the charity.
- 2.2 Under the 2000 Scheme, the Council is the trustee of the charity. Article 7 of the Scheme, empowers the Council to delegate its trustee function to a committee consisting of any two or more members, provided that the Council exercises reasonable supervision over the committee. The committee must "promptly" report their acts and proceedings to the Council. The Council's Constitution establishes the Board to administer the charities affairs and discharge the Council's trustee functions.
- 2.3 The purpose of the charity is to preserve the Park Lands in perpetuity as a memorial to King George V under the provisions of the King George's Fields Foundation. The 1965 Scheme which established the Foundation gave its purpose as "to promote and to assist in the establishment and to promote the preservation throughout the United Kingdom of Playing Fields for the use and enjoyment of the people..." Additionally, the trustees may "apply the land to such charitable purposes as are set out in the Recreational Charities Act 1958".
- 2.4 The Recreational Charities Act 1958 has now been repealed and is now replaced by the Charities Act 2011, specifically section 5.
- 2.5 The Scheme deals with 2 categories of land as identified in Parts 1 and 2 of the Schedule. The first referred to in Part 1 of the Schedule consists of park lands identified in plan KGF2 of which only a very poor copy has been, but so far as it can be read, the Park Lands covered by KGF2 are as follows:
 - Stepney Green Park and nearby lands, namely Belgrave Road open space and White Horse Road Park.
 - Stepping Stones Farm.

- Most of Mile End Park.

2.6 Under Article 5(1)(a) the Scheme in addition to any other powers that the trustees have, it gives the Trustees the ability to “let part or parts of the land ... to Third Parties on leases not exceeding 10 years to provide to the public, recreational facilities or such services reasonably ancillary to recreation as are mentioned in Article 7 of the Greater London Parks and Open Spaces Order 1967”

2.7 The second category of land, referred to in Part 2 of the Schedule to the Scheme consists of “10 shop units situated beneath the ‘Green Bridge’ at Mile End in Stepney, in the London Borough of Tower Hamlets, on north and south sides of Mile End Road, just west of its junction with Burdett Road and Grove Road. The Council, as trustee, is given specific powers in relation to these shop units, to let them and there are no restrictions as to terms. The current lettings are dealt with in more detail in paragraph 7 of this report .

2.8 In summary, the Council is to keep the Park Lands in perpetuity as a memorial to King George V and may use the land:

- For playing fields named and sign-posted as “King George’s Fields”.
- For facilities for recreation or other leisure-time occupation, provided that it is in the interests of social welfare and for the public benefit.
- For such charitable purposes as set out in section 5 of the Charities Act 2011, as follows:
 - (1) It is charitable (and is to be treated as always having been charitable) to provide, or assist in the provision of, facilities for-
 - (a) recreation, or
 - (b) other leisure-time occupation,
 if the facilities are provided in the interests of social welfare.
 - (2) The requirement that the facilities are provided in the interests of social welfare cannot be satisfied if the basic conditions are not met.
 - (3) The basic conditions are—
 - (a) that the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended, and
 - (b) that—
 - (i) those persons have need of the facilities because of their youth, age, infirmity or disability, poverty, or social and economic circumstances, or

- (ii) the facilities are to be available to members of the public at large or to male, or to female, members of the public at large.
- (4) Subsection (1) applies in particular to
 - (a) the provision of facilities at village halls, community centres and women's institutes, and
 - (b) the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation,and extends to the provision of facilities for those purposes by the organising of any activity.

But this is subject to the requirement that the facilities are provided in the interests of social welfare.
- (5) Nothing in this section is to be treated as derogating from the public benefit requirement.

3. A Trustee's 6 main Duties

(1) Ensure the charity is carrying out its purposes for the public benefit

You must make sure that the charity is carrying out the purposes for which it is set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

(2) Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

Registered charities must keep their details on the register up to date and ensure they send the right financial and other information to the commission in their annual return or annual update.

(3) Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it's properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner

(4) Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- not take inappropriate risks with the charity's assets or reputation
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds

You should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

(5) Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary

- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings

(6) Ensure your charity is accountable

You must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where you delegate responsibility for particular tasks or decisions to staff or volunteers

4. Making Decisions

4.1 As a trustee, you can take professional advice to help you make decisions on the charity's behalf. But you and your fellow trustees are jointly responsible for the decisions you make.

4.2 When making a decision, you must:

- act within your powers
- act in good faith, and only in your charity's interests
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors
- ignore any irrelevant factors
- manage conflicts of interest and loyalty, i.e. could your decision-making be influenced by your personal circumstances, or your involvement with another organisation
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

5. Legal Advice

5.1 A guide to the law as it affects Board Members is attached as **Appendix B**.

APPENDIX A

De 122/21

THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES

Under the power given in the Charities Act 1993

Order that from today, the

28th FEBRUARY 2000

the following

SCHEME

will govern the charity

previously known as

KING GEORGE'S FIELDS, STEPNEY (1077859)

and now to be known as

KING GEORGE'S FIELD, MILE END

at Stepney

in the London Borough of Tower Hamlets

Commissioners' References:

Sealing: 33(S)/00

Case No: 152044



[Signature]
ASSISTANT COMMISSIONER

SI52044S

SCHEME

1. Definitions

In this scheme:

"the area of benefit" means Stepney, in the London Borough of Tower Hamlets.

"the charity" means the charity identified at the beginning of this scheme.

"the existing trusts" means a deed of covenant of 9th November 1965 as varied deed of variation of 29th January 1997.

"the trustee" means the trustee of the charity acting under this scheme.

"the Association" means the National Playing Fields Association (306070).

ADMINISTRATION

2. Administration

The charity is to be administered in accordance with this scheme. This scheme replaces the existing trusts of the charity.

3. Name of the charity

The name of the charity is King George's Field, Mile End.

USE OF PROPERTY

4. Use of property

The land described in part 1 of the schedule must be preserved in perpetuity as a memorial to His Late Majesty King George V under the provisions of the King George's Fields Foundation. In addition to those provisions the trustee may apply the land to such charitable purposes as are set out in the Recreational Charities Act 1958 including the construction of indoor recreational facilities provided that no application of property may be made for additional purposes without the consent of:

- (1) the Association (such consent not to be unreasonably refused or delayed); and
- (2) the Commissioners.

POWERS OF THE TRUSTEE

5. Powers of the trustee

In addition to any other powers which it has, the trustee may exercise the following powers in furtherance of the objects of the charity:

The pow

(a)

(b)

(The u
36 of
restrie

(2)

Power
third
such

(3)

Power
made
upon
the t

Trustee
London f

Delegat

The tru
power
comit
truste

8.

Ad

(1

(

(1) The power to:

- (a) let part or parts of the land described in part 1 of the schedule to this scheme to third parties on leases not exceeding 10 years to provide to the public recreational facilities or such services reasonably ancillary to recreation as are mentioned in Article 7 of the Greater London Parks and Open Spaces Order 1967 on the terms therein mentioned; and
- (b) let the land identified in part 2 of the schedule to this scheme.

(The trustee must comply with the restrictions on disposal imposed by section 36 of the Charities Act 1993, unless the disposal is excepted from these restrictions by section 36(9)(b) or (c) or section 36(10) of that Act.)

- (2) Power to place the management of the land or any part of it in the hands of a third party contractor exercising the powers of the Council on its behalf on such terms as the Council sees fit.
- (3) Power to make rules and regulations consistent with this scheme for the management of the charity. The rules may include the terms and conditions upon which the charity's property may be used by persons or bodies other than the trustee and the sum (if any) to be paid for such use.

TRUSTEE

6. **Trustee**

London Borough of Tower Hamlets is the trustee of this charity.

7. **Delegation to committee**

The trustee may delegate the performance of any act, including the exercise of any power or discretion, to a committee consisting of any two or more members of the council of the trustee. (The trustee must exercise reasonable supervision over the committee and the committee must promptly report their acts and proceedings to the trustee.)

AMENDMENT OF SCHEME

8. **Amendment of scheme**

- (1) Subject to the provisions of this clause, the trustees may amend the provisions of this scheme.
- (2) Any amendment must be made by a resolution passed at a meeting of the trustee of which not less than 21 days notice has been given.
- (3) The trustees must not make any amendment which would:
 - (a) vary this clause.

- (b) vary clause 1 (Definitions);
 - (c) vary clause 4 (Use of property);
 - (d) vary clause 5(1);
 - (e) confer a power to dissolve the charity;
 - (f) enable them to spend permanent endowment of the charity.
- (4) The trustees must obtain the prior written approval of the Commissioners before making any amendment which would vary the name of the charity;
- (5) The trustees must:
- (a) promptly send to the Commissioners a copy of any amendment made under this clause; and
 - (b) keep a copy of any such amendment with this scheme.

GENERAL PROVISION

9. Questions relating to the scheme

The Commissioners may decide any question put to them concerning:

- (1) the interpretation of this scheme; or
- (2) the propriety or validity of anything done or intended to be done under it.

The li
in a l
Field
Towe

sh
juncti

SCHEDULE

PART 1

The land situate at Mile End in Stepney, in the London Borough of Tower Hamlets, described in a Deed of Variation dated 29 January 1997 which was made between the National Playing Fields Association of the first part and The Mayor and Burgesses of the London Borough of Tower Hamlets of the second part.

PART 2

10 shop units situated beneath the 'Green Bridge' at Mile End in Stepney, in the London Borough of Tower Hamlets, on north and south sides of Mile End Road, just west of its junction with Burdett Road and Grove Road.

APPENDIX B

SERVICE ON CHARITIES: A GUIDE TO THE LAW

This advice is for Board Members. It sets out some of the most important responsibilities and requirements relating to service on the Board. If a Board Member has a query then they should consult the Monitoring Officer.

General

1. To be a charity an organisation must operate for one of the following charitable purposes and be able to demonstrate that its aims are for the public benefit:
 - the prevention or relief of poverty;
 - the advancement of education;
 - the advancement of religion;
 - the advancement of health or the saving of lives;
 - the advancement of citizenship or community development;
 - the advancement of the arts, culture, heritage or science;
 - the advancement of amateur sport;
 - the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
 - the advancement of environmental protection or improvement;
 - the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantages;
 - the advancement of animal welfare;
 - the promotion of the efficiency of the armed forces of the Crown or of the police, fire and rescue services or ambulance services;
 - other purposes recognised as charitable under existing law and any new purposes which are similar to another prescribed purpose.
14. A charitable organisation must operate for the public benefit and have exclusively charitable purposes. An organisation that operates for political purposes does not qualify for charitable status.
2. To register as a charity the organisation must submit its governing document (constitution or rules, trust deed, or Memorandum and Articles of Association – depending on whether it is an unincorporated association, trust or limited company) plus any other required documents to the Charity Commissioners for approval. If they are satisfied that the organisation is charitable it will be registered as such.
3. Those who are responsible for the control and administration of a charity are referred to as charity trustees, and will have those obligations even where the charity has the legal form of a company limited by guarantee. Trustees of a charity retain personal liability, and can only delegate to the extent that the governing document authorises them so to do.

4. Specific guidance for those serving on charitable organisations is available from the Charity Commission.

Trustees' Duties

5. Trustees have the following duties:
 - (1) Trustees must take care to act in accordance with the governing document and to protect the charity's assets. They are also responsible for compliance with the Charities Acts, (and as relevant the Trustee Acts) and should note the particular requirements of the applicable Acts in respect of land transactions.
 - (2) Trustees must ensure the charity is carrying out its purposes for the public benefit, must always act in the charity's best interests and act with reasonable care and skill.
 - (3) Generally speaking, trustees must not profit from their position. They cannot receive remuneration or any other personal benefit without the sanction of the Charity Commission. They must also perform their duty with the standard of care which an ordinary, prudent business person would show. Higher standards are required of professionals, and in relation to investment matters.
 - (4) Trustees must ensure that the information relating to the charity and trustees is registered with the Charity Commissioners and that annual accounts, reports and returns are completed and sent where this is required.
 - (5) If charitable income exceeds £10,000, the letters, advertisements, cheques etc. must bear a statement that the organisation is a registered charity.
 - (6) Trustees are under a duty to ensure compliance with all relevant legislation and other regulators (if any) which govern the activities of the charity.
 - (7) Trustees have a duty of care to their charity if they work with vulnerable groups including children and will need to take the necessary steps to safeguard and take responsibility for them.

Trustees' Personal Liability

6. If in doubt, always consult the Charity Commission. A trustee who does so can avoid personal liability for breach of trust if he/she acts in accordance with the advice given.
7. Liabilities may arise in the following ways:
 - (1) Generally, a trustee incurs personal liability if he/she:
 - acts outside the scope of the governing document
 - falls below the required standard of care

- acts otherwise than in the best interests of the charity, in a way which causes loss to the charity
 - makes a personal profit from the charity's assets.
- (2) In such circumstances the trustee will incur personal liability for losses incurred and/or for personal gain.
- (3) Trustees can be personally liable to third parties because, unlike a company, a trust or unincorporated association has no separate identity from the trustees. The governing document will normally provide for trustees to be given an indemnity from the charity's assets, provided they act properly in incurring the liability. Trustees remain personally liable for their own acts and defaults once they have retired. If they have entered into any ongoing contracts on behalf of the charity they should seek an indemnity from their successors. If the charity is a company, the trustees will be protected from liabilities incurred in the day-to-day running of the charity in the normal course, but will be personally liable if they commit a breach of trust (see (1) above).
- (4) Trustees may be liable to fines if they do not comply with the duty to make returns etc.

Indemnities

8. An indemnity can be given from the charity's assets provided the trustee has acted properly and within his/her powers. Trustees may take out insurance to protect themselves against personal liability but not for criminal acts, fraud etc. The premiums can be paid out of the charitable funds so long as there is no express prohibition in the governing document, the trustees observe their duty of care, the insurance is in the best interests of the charity and the cost is reasonable.

APPENDIX C

Eligibility to serve as a Trustee

Prospective Trustees must meet the following eligibility requirements before any appointments can be made. They must:

- Be at least **18 years old** or at least 16 years old if the charity is also a Company or Charitable Incorporated Organisation (CIO).
- Have no unspent conviction for an offence involving dishonesty or deception.
- Not be declared bankrupt or be subject to bankruptcy restrictions, an interim order or have an individual voluntary agreement (IVA) with creditors.
- Not be disqualified from being a company director.
- Not been removed as a trustee by either the charity commission, the Scottish charity regulator or the High Court due to misconduct or mismanagement.
- Not be disqualified from being a trustee by an order of the Charity Commission under section 181A of the Charities Act 2011