


<p style="text-align: center;">King Georges Fields Trust</p> <p style="text-align: center;">Board meeting 27th February 2019</p>	 <p style="text-align: center;">TOWER HAMLETS</p>
<p>Report of: Judith St John - Divisional Director of Sports Leisure and Culture</p>	<p>Classification: Unrestricted</p>
<p>Governance of the King George's Fields Mile End Charity and Options for Public Use of Mile End Park</p>	

Lead Member	Councillor Amina Ali, Cabinet Member for Cabinet Member for Culture, Arts and Brexit
Originating Officer(s)	1) Judith St John - Divisional Director of Sports Leisure and Culture 2) Steve Murray – Head of Arts Parks and Events
Wards affected	Wards
Key Decision?	Yes
Forward Plan Notice Published	29 January 2019
Reason for Key Decision	Vibrant, dynamic, inclusive and community-led initiative
Strategic Plan Priority / Outcome	This proposal potentially cuts across the whole of the authority's Strategic Plan

REASONS FOR URGENCY

It was not possible to publish the report five clear days in advance of the meeting as there were a number of important legal issues that needed to be clarified. Before the item can be considered at this meeting, the Chair of the Board would need to be satisfied that the establishment of a Working Group to produce revised Terms of Reference for the Mile End Charity should not be delayed to a later meeting given the significance of this work for Tower Hamlets.

Executive Summary

The Mayor wishes to encourage public participation in decisions by the Board of King George's Fields Mile End Charity relating to the Mile End Park facility.

This report confirms the Board's powers to facilitate increased public participation in its decision making processes and sets out options for how this might be approached.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Authorise the establishment of a working group to produce revised Terms of Reference for the Mile End Charity as recommended in this report.

1. REASONS FOR THE DECISIONS

- 1.1 To maximise the potential of an important and arguably underused physical resource to impact upon and benefit all residents of the borough, in particular those residents suffering disadvantage.
- 1.2 A golden opportunity for the authority to model and champion a vibrant, dynamic and genuinely community-led approach to management of a major community asset for the benefit of its residents.

2. ALTERNATIVE OPTIONS

- 2.1 Continued limited and ad hoc public involvement in decisions relating to Mile End Park.

3. DETAILS OF THE REPORT

Overview of Powers & Duties of the Trustees

- 3.1 The origin and objectives of the King George's Fields Trust Charities – responsibility for both the King George's Fields Mile End Charity and the Tredegar Square Charity are vested in the Board - and the Board's powers, duties and responsibilities as Trustees to both are set out in the Briefing Note and Guidelines previously circulated to Members and appended to this report at **APPENDIX A**.
- 3.2 However, for the purposes of this report, references to 'the Charity' are limited to the King George's Fields Mile End Charity only.
- 3.3 The Charity Commissioner's Scheme 2000, copy of which is appended to the guidelines, is the governance document for the King George's Fields Mile End Charity and provides that:
 - 3.3.1 "The purpose of the Charity is to preserve the Park Lands in perpetuity as a memorial to King George V under the provision of the King George's Fields Foundation. The 1965 Scheme

which established the Foundation gave its purpose as “*to promote and 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 of the Charity may “*apply the land to such charitable purposes as are set out in the Recreational Charities Act 1958*”. The 1958 Act has since been replaced by the Charities Act 2011.” [Members are referred to the Guidelines document for a comprehensive list of those ‘charitable purposes’].

- 3.3.2 “The Council as sole Trustee of the Charity is empowered to delegate its trustee function to a committee consisting of any two or more members, provided that the Council exercises reasonable supervision of the committee”.
- 3.4 The powers and duties of the Trust have historically been exercised through the Council Cabinet, each of whom is a Trustee of the Board, led by the Mayor.
- 3.5 Efforts to establish whether a management committee exists or has ever existed for the King George’s Fields Mile End Charity have proved unsuccessful to date. Council records suggest that two Councillors held nominations to an entity called ‘the Mile End Partnership Company’ in 2004 however no company of this name is listed on the Companies House Register.
- 3.6 The Board is minded to increase public participation in its decision making activities in relation to the Mile End Park facility and wishes to consider its powers to do so and the terms upon which it might be done.
- 3.7 There is nothing within the Scheme, or within the legislative framework within which it operates, that prevents the involvement of members of the public in the administration of the Charity - so long as their activities are in keeping with the objectives of the Charity and the individuals involved remain answerable to and strictly controlled by the Board. However it should be noted that members of the public are not currently entitled to sit on the Board or take part in Board decision making.
- 3.8 It is open to the Board to adopt any legal arrangement or structure that, in its judgement, best enables it to fulfil the objectives of the Charity so that, for example, the Board may:
 - 3.8.1 directly co-opt suitable individuals to the Board; and/or
 - 3.8.2 delegate the administrative and decision-making functions of the Board to a volunteer management committee reporting periodically to the Board; and/or

3.8.3 engage third party contractors to deliver the Charity's objectives

so long as all parties are acting all times in accordance with the Charity's aims and within the applicable legal framework. The 2000 Scheme under which the Board currently operates states that membership of the Board is restricted to Council members but opening Board membership to non-Councillors is something the Board can consider and address in revised terms of reference.

Public Participation in Board Decision Making

- 3.9 In common with other Council committees and subcommittees, members of the public are currently entitled to:
- 3.9.1 attend meetings of the Board - except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;
 - 3.9.2 find out what key decisions will be taken by the Board, and when;
 - 3.9.3 see reports and background papers and any records of decisions made by the Council and the Mayor, the Executive or appropriate Member;
- 3.10 As is the case with all open Subcommittee meetings Members of the public who wish to speak at Board meetings are expected to register a request to do so in advance of the meeting in line with normal Cabinet Subcommittee procedure. The Mayor is open to informal and ad hoc public participation in Board meetings where considered appropriate.
- 3.11 The Scheme does not *need* to be amended to increase public participation however best practice* is that Terms of Reference should be reviewed regularly to ensure that they reflect the Charity's aims and objectives.
- 3.12 To this end it is recommended that revised Terms of Reference be worked up for the Charity which will consolidate the aims and objectives currently spread across different documents and pieces of legislation, and which will act as a platform for development of the Board's vision and strategy for Mile End Park.
- 3.13 Clearer Terms of Reference will make also it easier to both identify suitable and willing individuals who might be invited to join or work with the Board as appropriate and assist the Board in deciding the most appropriate vehicle to deliver its strategic aims for the King George's Fields Mile End Charity. Adoption of revised Terms of Reference and/or any other changes to the Board's current decision-making processes can be made by resolution following 21 days' notice.

- 3.14 There is no reason why the informal, ad hoc method of public participation referred to above should not continue and be enshrined as a Board/Mayoral discretion in the amended terms of reference.
- 3.15 Work on producing Terms of Reference would typically be undertaken by a small, strictly time-limited, working group consisting of appropriate Members and Officers.

**see the Charity Governance Code*

4. EQUALITIES IMPLICATIONS

- 4.1 Wider public participation in the Charity's decision making processes offers limitless potential to advance the Council's broad equality objectives.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There are no direct financial implications for LBTH resulting from the recommendation within this report.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The legal implications of this proposal are dealt with in the body of this report.

Linked Reports, Appendices and Background Documents

Linked Report

- Minutes of the meeting of the King George's Fields Charity Board held on 28 November 2018.

Appendices

- Guidance for King George's Fields Charity Board prepared by Paul Green 9 January 2018

Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012

NONE

Officer contact details for documents:

Ngozi Adedeji
x0307

APPENDIX A

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 12/21

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 by 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:

(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.

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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