

Appendix 8

Charity Commission Guidance for Local Authorities as Trustees of Charities and Guidance for Councillors

1. Introduction

Tower Hamlets Council is the trustee of King George's Field Trust ("KGFT") charity and is responsible for managing it in a way that complies with the law.

- The King George's Field charity is registered with the Charity Commission as King George's Field, Mile End Charity, registered number 1077859 and has an annual turnover in excess of £1,000,000.
- The Tredegar Square charity is registered with the Charity Commission as King George's Field – Stepney (Tredegar Square Bow), registered number 1088999 and has an annual turnover of approximately £10,000 per annum. Funds are used to upkeep Tredegar Square Gardens for the use and enjoyment of the public. The land associated with this charity is limited to Tredegar Square Gardens in Bow. The Tredegar Square charity is administered via the KGFT Board.

2. Charity Commission Guidance for local authorities (or councils) as trustees of charities

The below information has been taken from the government website: [Local authorities \(or councils\) as trustees of charities - GOV.UK](#) and was published on 8 August 2024.

Where a local authority is trustee, it is the local authority itself, not individual councillors, who is trustee.

Local authorities can have the expertise needed to manage charities. However, issues can arise such as the local authority:

- not being aware that it is trustee of a charity
- unknowingly using charity property for its own local authority purposes
- not identifying when there is a conflict of interest
- not managing small funds, which become dormant
- not keeping separate accounts for the charity
- not submitting accounts or annual returns to the Charity Commission when they fall due.

The expectations on local authorities carrying out the trustee role are the same as on individuals and the same trustee duties apply. These are:

- ensuring the charity is carrying out its purposes for the public benefit
- complying with the charity's governing document and the law
- acting in the charity's best interests
- managing the charity's resources responsibly
- acting with reasonable care and skill
- ensuring the charity is accountable

It is therefore important that local authorities that are trustees:

- ensure charity property is used for the charity's purposes
- ensure proper mechanisms are in place for making trustee decisions

- ensure decisions they make are only in the charity's best interests
- identify and manage conflicts of interest, and obtain authority from the Charity Commission where it is needed
- comply with accounting and reporting responsibilities

This guidance covers these and other issues.

Read more about [trustee duties](#).

Where the local authority is the trustee:

- any council officer or councillor working on charity business is not a trustee and does not have the responsibilities or liabilities of a trustee; you are acting on behalf of the local authority
- the local authority is the decision-maker
- the local authority is liable for the decisions it makes as trustee

Making decisions

As trustee, it is for the local authority to make trustee decisions, for example about:

- how the charity operates, such as changes to opening and closing times of a public facility
- where the charity is a grant-making charity, any policy decisions about how recipients should be selected based on the charity's purposes
- whether to dispose of charity land or change its use
- whether to change the purposes of charities, merge or close them
- agreeing annual accounts
- fundraising

Keep a record of decisions you make as trustee.

The mechanism for making decisions

The local authority can decide the mechanism for making decisions and exercising its functions as trustee based on factors like:

- the type and size of the charity
- the number of charities it is trustee of
- the extent to which conflicts of interest might arise
- what is permitted by local authority legislation

Options include:

- decision-making by full Council or at cabinet level
- decision-making delegated to committees such as a committee of the local authority or a committee of the executive of the local authority

Delegation may help you manage conflicts of interest.

Where decision-making by full Council or at cabinet level is concerned, an advisory committee can be set up to help the local authority make decisions. For example, it can make recommendations to the local authority. An advisory committee cannot make decisions.

You should get professional advice if you need it on setting up decision-making structures.

If you delegate decision-making, keep a written record of this in the charity's records and a copy in the local authority's records as appropriate

Complying with trustee duties when making decisions

Charity trustees must make decisions in a way that complies with their duties, including their duty to further their charity's purposes and act only in the charity's best interests. Use the principles listed in our [decision-making guidance](#) to help you.

One of these principles is that trustees must be sufficiently informed. The local authority as trustee can take a range of actions to help it ensure it is informed, depending on the nature and complexity of the issue being considered. For example, by:

- running a public consultation
- commissioning an independent review of proposals
- taking professional advice

The local authority should consult on significant decisions that are likely to affect beneficiaries. These include (but are not limited to) changing a charity's purposes or disposing of designated land. Conducted well, consultation can:

- help you understand different views
- help you assess the impact of the proposed decision
- show you are open and transparent

Getting an independent review is an option when factors such as the risks, complexity and costs justify it.

Taking relevant professional advice can help the local authority understand (for example) the law, and the risks and complexity of a proposal.

Independent information and advice will help you examine proposals from the charity's perspective particularly when the local authority faces a conflict of interest.

Managing conflicts of interest

Local authorities will often face conflicts of interest because of the different roles they have, for example as the provider of statutory services or the planning authority.

A decision to dispose of land, in particular, is one where these different roles can interact and present the local authority with a conflict of interest that must be managed. For example, because it may stand to benefit from the decision to dispose.

A conflicts of interest policy

You should set up a separate conflicts of interest policy, to guide how the local authority will make decisions when it is conflicted.

The policy should be appropriate to the types of charities the local authority is trustee of, and the ways in which the local authority could be conflicted. For example, a more detailed policy may be suitable where the local authority is trustee of several public facilities, or where one or more facility is significant in terms of its value, size, community use or public interest.

A local authority's usual conflict of interest policy, that applies to its role as statutory authority, does not apply to its role as charity trustee.

Identifying and managing conflicts of interest

The first step is to make sure the local authority identifies that it is conflicted.

Then, think about how you will manage the conflict when you make your decision. This should be in line with the charity's conflicts of interest policy. For example, by appointing [new unconflicted trustees](#) alongside the local authority so that on this occasion they (not the local authority) make the decision.

If you cannot manage the conflict of interest, you must have [authority from the Charity Commission](#) before you can make the decision.

Your decision must be in the charity's best interests. If you need Commission authority, you will need to show how you have reached this conclusion.

Read the Commission's guidance about [conflicts of interest](#). Get professional advice about managing conflicts if you need it.

Managing and disposing of charity land

Where the local authority is trustee of public facilities, the decisions it makes about them can be controversial and attract criticism. This includes decisions to dispose of charitable land.

A local authority as a charity trustee is entitled to consider the suitability and viability of the charitable property it manages, and to make proposals that further the charity's purposes and are in its best interests. This may include deciding to dispose of the land.

However, we know from our casework that if such proposals are not managed carefully, they can create problems including breach of trust, financial loss and reputational damage.

Make sure you understand your responsibilities when managing or disposing of charity land. The guidance in this section covers:

- the requirements when disposing of land
- when the local authority is conflicted
- when the local authority is a party to the disposal
- land swaps

Read [case studies](#) about disposing of land.

The legal requirements when disposing of charity land

When selling, leasing or in other ways disposing of charity land, you must:

- have the power to dispose
- consider that disposing of the land is in the charity's best interests
- comply with the legal requirements on disposing of charity land
- get Charity Commission authority if it's needed

Read our guidance about [disposing of charity land](#).

Disposing of designated land

Designated land is land that must be used for particular purposes as set out in the charity's governing document. For example, recreation grounds or concert halls.

It is important, when considering disposing of designated land, to consult with beneficiaries and others who may be affected by the disposal. You should consider their views when making your decision. In certain circumstances, you may have to give public notice of the disposal.

You will usually need Charity Commission authority to dispose of designated land. Read our guidance about the disposal of [designated land](#).

When the local authority is conflicted or is party to the disposal

Local authorities can face a conflict of interest when disposing of land. See the [example above](#).

It may also be a party to the disposal. That is, it is proposed it will buy or rent the charity's land.

You must consider that the decision to dispose is in the charity's best interests. You must also manage the [conflict of interest](#).

In addition to the usual rules on disposing of charity land mentioned above:

- if you are disposing to a third party and you cannot manage the conflict of interest, you must get authority from the Charity Commission
- if the local authority is a party to the disposal, you must get authority from the Charity Commission even if you can manage the conflict of interest

If the local authority is a party to the disposal you should get professional advice on the rules about self-dealing.

If you need authority, you will need to provide the following information to the Commission:

- a description of the land being disposed of
- confirmation that you have the power to dispose
- whether the land is designated
- whether the local authority is party to the disposal
- who will be parties to the disposal
- how you decided the disposal is in the charity's best interests
- whether you have complied with the legal requirements about charity land disposals; if not, why
- whether the disposal is on proper commercial terms and how terms have been agreed
- details of any professional advice taken on behalf of the charity and whether the advisor was independent
- whether the disposal affects the charity's beneficiaries, whether you consulted, and how you took into account responses or feedback
- whether the local authority managed the conflict of interest, and if so how

[Apply for authority](#).

Land swap

Local authorities as trustees can develop plans which involve swapping their own, corporate property with the charity's land. The corporate property becomes charitable land.

The same rules mentioned above apply: the decision must be in the charity's best interests.

Where the charity's land is designated, the local authority must consider how the purposes for which the land must be used may be affected.

As the local authority is party to the disposal, you must have Charity Commission authority before you can go ahead.

You will need to provide the following information to the Commission:

- confirmation that you have the power to dispose
- how you decided that the land swap is in the charity's best interests
- why the local authority's land being swapped with the charity's is suitable
- descriptions of the land being swapped
- whether the land swap will affect the charity's beneficiaries, whether you consulted, and how you took into account responses or feedback
- who will be parties to the disposal
- details of any professional advice taken on behalf of the charity, and whether the advisor was independent
- whether the local authority managed the conflict of interest, and if so how

[Apply for authority](#).

The local authority using the charity's land

It is important that the local authority separates out charity property from its own corporate assets and does not unknowingly use charity property for its purposes. For example, as office space for its employees.

If you are considering renting the charity's land:

- it must be in the charity's best interest to do this
- the local authority must comply with the rules on [disposing of charity land](#)
- the local authority must manage the conflict of interest, as explained above
- the local authority will need Charity Commission authority because it is party to the disposal, [as explained above](#)

Where the charity's land is designated, it must be used for the purposes set out in its governing document. If it is not, this could be a breach of trust.

Transferring charity land to another charity

A transfer to another charity must follow [the legal requirements](#) about disposing of land.

Replacing the local authority as trustee

If the local authority no longer wishes to be trustee, you can appoint a new trustee. The new trustee can be:

- another charity
- another local authority
- a company
- individuals

Check the charity's governing document and follow the process for appointing new trustees.

If your governing document does not have suitable appointment provisions, or it names your local authority as the trustee:

- you can change the governing document to remove the local authority as the trustee and/or introduce a power to appoint trustees. Read our [guidance about changing governing documents](#) or
- you may be able to use the statutory power to appoint trustees in section 36 of the Trustee Act 1925

Get professional advice if you need it.

Read guidance about [finding new trustees](#).

Keeping charity records and accounts

You should keep separate records for the charity, such as minutes of trustee meetings and copies of professional advice taken. Don't mix charity and local authority records. You must comply with the rules on accounting. Keep separate accounts for the charity.

Minutes of meetings

Keep a written record of your decisions. This is usually done by keeping written minutes of the meetings at which decisions were made.

The level of detail in your minutes should be in proportion to the significance and potential impact of the decision. If you rely on a report or other document that is mentioned in the minutes, a copy should be attached.

Recording decisions in this way:

- helps to ensure certainty about what was decided
- helps you show that you have acted properly and complied with your duties

Annual returns, reports and accounts

All charities (whether registered with the Charity Commission or not) must [prepare accounts](#) and must make them available on request.

Understand whether you need to submit annual returns, reports and accounts to the Commission. Different charities face different requirements. Use [our annual return guidance](#) to check if you are getting it right.

Linking charities

If the local authority is trustee of several charities, you can apply to link them for accounting, registration and reporting purposes. This means that as trustee, you only need to produce one set of accounts for all the charities. Read our guidance about [linking](#).

Annex A – checklist

These questions can help you review your local authority's governance of charities.

1. Do you have an up-to-date list of the charities of which the local authority is trustee?
2. Is there central management of the charities?
3. Do you have a copy of all the charities' governing documents?
4. Do the charities' governing documents have the [rules you need](#)?
5. Are the charities [registered with the Charity Commission](#) where they meet the requirements for registration?
6. Do you produce annual accounts for the charities?
7. Is the local authority up to date with [filing requirements](#)?
8. Have you considered applying for a [linking direction](#)?

9. Do you keep separate records for the charities?
10. How often does the local authority as trustee consider the business of its charities? Does this comply with the rules in the relevant charity's governing document?
11. Does the local authority review, where certain activities are delegated to (for example) council officers or committees, that the arrangement remains appropriate?
12. Does the local authority as trustee consider the effectiveness of the charities?
13. Are there any dormant funds?
14. Does the local authority use any charity land as corporate property? If it does, this should be remedied immediately.
15. What is the decision-making structure for the local authority to consider charity business and make decisions?
16. Is there a mechanism to collect feedback from beneficiaries and other interested parties on relevant trustee decisions?
17. How does the local authority manage conflicts of interest when making decisions?
18. Does the local authority have a separate conflict of interest policy?
19. Do you review and manage the risks faced by the charities?
20. Do you monitor financial performance during the year?
21. Have you considered sources of income and do you have a strategy in place to raise funds?
22. Do any of the charities have [permanent endowment](#)? If so, have you considered whether you can spend all or some of it as income?

3. Local authorities (or councils) as trustees of charities – a guide for councillors

The below information has been taken from the government website: [Local authorities \(or councils\) as trustees of charities – a guide for councillors - GOV.UK](#) and was published on 8 August 2024. Case studies can also be found on this website page.

Overview

Many local authorities – or councils – hold assets that are charities.

Often this is because a donor has left land or property to a council on condition that it is used for a charitable purpose such as a museum, art gallery or recreation ground.

This means that the local authority is the trustee of the charity and is responsible for managing it in a way that complies with the law.

The local authority might be a trustee of different types of charitable assets, such as land or a school prize fund.

Where a local authority is trustee, it is the local authority itself and not individual councillors, who is trustee.

Common issues that can arise

Local authorities can have the expertise needed to manage charities. But issues can arise – and these can attract significant local attention.

For example, the local authority:

- not being aware that it is the trustee of a charity
- not keeping separate accounts for the charity

- not submitting accounts or annual returns to the Charity Commission when they fall due
- unknowingly using charity property for its own local authority purposes
- not following the rules when disposing of charity property
- not identifying when there is a conflict of interest
- not managing small funds, which become dormant

These issues can result in public criticism for the local authority, financial loss for the charity and breach of trust.

It is important that local authorities that are trustees understand what their legal responsibilities are.

Find out more:

- read Charity Commission [guidance about local authorities acting as trustee](#)
- speak to relevant officers at your council, for example the legal team or officers who are responsible for the asset in question

If the local authority has appointed you as trustee

Local authorities can have the right (under the terms of a governing document) to appoint trustees. Your local authority may have appointed you – a councillor – to be a trustee of a charity. If so:

- you, rather than the local authority, are responsible for the administration of the charity, along with your fellow trustees
- you and your fellow trustees are personally liable for the decisions you make
- you must act in the interests of the charity, not those of the local authority
- you do not 'represent' the council on the trustee board

Read guidance about:

- [trustee duties](#)
- [trustee decision-making](#)
- [managing conflicts of interest](#)