

CHARITABLE TRUST DEED FOR AN INDEPENDENT CHURCH

GUIDANCE NOTES

This model is designed for use in situations where the wider membership of the church does not have an involvement in the governance and decision-making processes of the church. If in your church the decision-making process involves the wider membership and a degree of authority is reserved to the church members then you should not use this model but rather you should consider using the model constitution (charitable unincorporated association) or model memorandum and articles of association (charitable company).

A trust does not have a separate legal identity and consequently it cannot enter into contracts or hold property in its own name; such activities must be undertaken by the trustees in their personal capacity. This means that there is a degree of risk for the trustees if a liability is incurred which is beyond the extent of the trust's assets. If, therefore, it is envisaged that the church will hold property, employ a number of staff, enter into significant contracts and/or engage in activities which might give rise to the risk of significant liability then you may wish to consider setting up as a charitable company (using the model memorandum and articles of association) rather than a charitable trust since this would provide mechanisms which afford a greater degree of protection to the charity trustees than is the case under a charitable trust.

It should be emphasised that this model is intended to form the basis of a document tailored to the specific circumstances of your church and you will need to ensure that it is amended to properly reflect the reality of your particular circumstances. Using this model should speed up the process of registration with the Charity Commission since the Commission will apply a "light touch" approach where the model is used without significant amendment. This does not mean that the Commission will not ask questions and raise concerns about your registration application but it is hoped that the process will be much more straightforward than might be the case without the use of the model.

You should also note that once the Trust Deed is in place amendments can only be made in line with the amendment clause (clause 10 in this model) and that certain amendments require the prior written consent of the Charity Commission.

1. Introduction

This clause confirms the assets held by the First Trustees on behalf of the church and that such assets are held by the Trustees for the purposes of the church as set out in the Trust Deed.

2. Interpretation

This clause defines key terms used in the Trust Deed all of which should be self-explanatory. Clause 2.2 should serve to avoid the need to amend the Deed merely to reflect technical changes in the law.

3. Name and Objects

This clause is fundamental to the identity and purposes of the charity.

Clause 3.1 declares the name of the church. In choosing a name you should check the Register of Charities (via the Charity Commission website) to ensure that the name has not already been used by an existing registered charity. If it has you will not be able to use that exact name but you may be able to distinguish your church from the existing church by reference to a geographical location, eg ■ Church (Brighton).

It is possible to change the name in the future although proper procedures must be followed in this regard and advice should be sought. The Charity Commission must be advised of any change of name.

The objects (that is the main purposes) of the church must consist of exclusively charitable purposes under English law or the church will not be a charity and will be unable to register with the Charity Commission. Under the Charities Act 2006 a purpose must be for the public benefit in order to be a charitable purpose. It is important, therefore, that the objects clearly and accurately reflect the church's intended activities as if it is not obvious you may be asked to provide evidence of the public benefit of the purposes of the church. You should, therefore, consider carefully whether or not all of the objects referred to in this model document are appropriate in your particular circumstances. If you know that you will be undertaking activities which you do not think are encompassed by the model objects then legal advice should be obtained as regards whether or not one or more additional objects need to be added. If your church does not intend to undertake activities in fulfilment of any of the model objects then that object should be deleted. The Commission has further guidance in relation to public benefit on its website www.charitycommission.gov.uk

In relation to educational activities, the Charity Commission makes a distinction between educational activities that are intended to promote the principles and doctrines of the religion and other education provided in schools, colleges and so on. The former activities are accepted as being in furtherance of the religion and are included in clause 3.2.1. Clause 3.2.3 is intended for use where the church wishes to provide facilities for the provision of other general education not restricted to religious education by establishing and running schools, colleges or other educational/training activities. Care should be exercised if changing the wording of the objects to ensure that the any new objects listed fit within the legal definition of what is charitable; once again you may well need to obtain advice on this point.

You should consider carefully whether or not you wish to include a Statement of Beliefs as a schedule to the Trust Deed. The advantage of doing so is that the theological basis of the Church is clear from the governing document itself. However, there may be good reasons why you would prefer not to include a Statement of Beliefs. There is technically no difficulty with such an approach although you should be aware that if the theological basis of the church were to become a matter of dispute in the future then in extreme circumstances the issue might have to be resolved by the courts.

Once the charity is registered any change to the objects will require the Charity Commission's prior written consent.

4. **Powers**

This clause sets out the powers which may be exercised by the trustees in promoting the objects. The powers are not themselves charitable objects but rather are the means by which the objects in clause 3 may be achieved. It must be stressed that the powers cannot be exercised for any purpose which is beyond the scope of the objects. The powers are widely drawn to provide a good deal of flexibility and the "catch all" power at clause 4.23 should be sufficient to deal with matters not specifically referred to elsewhere in the clause. However, if it is known that the church will be engaged in specific activities which are not mentioned it may be appropriate to insert additional provisions in this regard.

The Trustees should have regard to the law applicable to any fundraising activities the charity is to undertake. The prohibition on "taxable trading" (see clause 4.8) is essential to avoid an objection from HM Revenue and Customs (ie the Inland Revenue). Where a charity engages in trading activities in order to raise funds it may well be that a separate, non-charitable trading company should be used for the purpose and specialist legal and/or accountancy advice will be needed.

In relation to clause 4.9, the restrictions on mortgaging charity land are contained in Sections 38 and 39 of the Charities Act 1993 as amended. In most cases the Charity Commission's consent is not required provided that certain procedures are properly followed. Legal advice may well be required.

Clause 4.10 gives the power to acquire property, including land and buildings. If you are considering acquiring residential property for occupation by a minister or other employee and it is proposed that part of the purchase should be met by the minister or employee concerned (creating a shared ownership arrangement) then you will need to obtain legal advice or seek guidance from the Charity Commission.

As regards clause 4.11, the restrictions on sales, exchanges and leases of charity land are contained in Sections 36 and 37 of the Charities Act 1993 as amended. In some cases the Commission's consent is required whilst in others a special procedure must be followed. Legal advice would normally be required.

Clause 4.13 enables the Trustees to designate funds for particular purposes or as reserves. It is prudent for a charity to maintain reserves to cover planned expenditure (for example, repairs to buildings) and to meet the kind of expenditure which may be required at short notice but reserves are not an end in themselves and should not be accumulated without a deliberate policy decision nor should they be excessive in relation to the amount known or reasonably believed to be required.

Clause 4.14 is intended to confer a wide power of investment but such power must be exercised responsibly. An investment is an asset which (1) is capable of producing income and (2) may also increase in capital value. The Trustees should formulate an investment policy (the detail of which will vary dependent upon the amount of funds available for investment) and in selecting investments the Trustees should have regard to the needs of the church for both capital and income growth and should act prudently. They should avoid trading and speculation.

Clause 4.15 confirms that it is possible for the management of investments to be delegated by Trustees to an agent provided that the requirements set out in the Trustee Act 2000 are observed.

Clause 4.16 deals with insurance. Charity property, whether buildings, equipment or other property, should normally be insured up to its full reinstatement value. Depending on the nature of the charity, other kinds of insurance may be necessary or prudent (for example, public liability and employer's liability).

The insurance referred to in clause 4.17 (usually known as trustee indemnity insurance) requires a special clause because it provides a benefit to the Trustees. This form of insurance may be helpful in some circumstances but it does not provide absolute protection from liability for the Trustees and proper advice should be obtained before such insurance is purchased.

Clause 4.19 covers employees, independent contractors and professional advisors and enables appropriate payments to be made in this regard. All necessary advice concerning employment law should be obtained as required. If there will be a significant number of employees it will be wise to consider establishing the church as a charitable company rather than a charitable trust. Special rules apply where any of the Trustees are employed by the church (see clause 8).

5. The Trustees

Clause 5.1 confirms the Trustees' legal responsibility for the management and administration of the church.

The minimum number of Trustees should be at least three (clause 5.2) although you could impose a higher minimum if you so wished. You may wish to make it a requirement that all Trustees accept and abide by an agreed statement of

beliefs. You should consider whether or not a reference to lifestyle is appropriate and if so you may wish to provide some explanation of what will be expected in practice.

Clause 5.3 provides for new or additional Trustees to be appointed by a resolution of the Spiritual Leadership of the Church passed by a simple majority and recorded appropriately for future reference. The Spiritual Leadership may, of course, choose some other basis for passing resolutions. If they do so the Trust Deed may need to be amended appropriately. If the church owns property of any description then a formal deed to record the appointment is required and legal advice should be obtained.

Clause 5.4 is designed to ensure that as far as possible everyone who takes up the task of being a Trustee of the church is aware of the legal responsibilities it entails. Before an individual is appointed as a Trustee they should also be asked to confirm that they are not in any way disqualified from serving in a trusteeship capacity. Again, legal advice should be obtained if necessary.

Clause 5.5 sets out the circumstances in which a person will cease to be a Trustee.

Clause 5.5.1 - Disqualification occurs under Section 72 of the Charities Act 1993 as amended if a Trustee is removed from office by the Court or the Charity Commission in the event of bankruptcy or the like, where the Trustee is disqualified under the Company Directors Disqualification Act or the Insolvency Act or where the Trustee has an unspent conviction for an offence involving dishonesty.

Clause 5.5.2 - Embarrassing problems can arise when a Trustee becomes too ill or infirm to be expected to take full responsibility for the task. The Trustees may wish to make a rule under clause 7.7.3 to require a Trustee who appears incapable to undergo a medical examination. Such a request would in most cases lead to a voluntary resignation.

Clause 5.5.3 - The number of meetings missed by a Trustee before this clause comes into play would depend upon the frequency of the meetings and is a matter for the Trustees to decide.

Clause 5.5.4 - The law does not permit Trustees to walk away from their responsibilities leaving no one in charge of the charity and consequently a resignation will not be valid if it would leave only one serving Trustee.

Clause 5.5.5 - This provision provides a mechanism for the removal of a disruptive Trustee or one whose conduct is felt to be detrimental to the best interests of the church whilst ensuring that the principles of natural justice are observed.

Clause 5.8 highlights that responsibility and authority for spiritual leadership rests with the recognised spiritual leaders within the church. The Trustees and the Spiritual Leadership must work in partnership. The Spiritual Leadership

cannot require the Trustees to do anything which is in breach of either the Trust Deed or the general law. The Trustees must bear in mind the spiritual direction of the church and the views of the spiritual leaders. This clause will need to be amended if in your case members of the Spiritual Leadership are not appointed directly by the Spiritual Leadership themselves. The process for appointing members of the Spiritual Leadership should be clearly documented as should all changes in the membership of the Spiritual Leadership.

6. Duty of Care and Extent of Liability

This clause emphasises the care which should be taken by Trustees when exercising their trustee responsibilities and that they will not be held liable for any liabilities arising as a result of their actions unless they have acted negligently or recklessly.

7. Proceedings of Trustees

The number of Trustees' meetings per year (clause 7.1) will depend upon the nature of the church's activities and the extent to which matters are delegated to committees under clause 7.7.2. However, the Trustees should hold a sufficient number of meetings each year to enable them to exercise proper control and in practice this is likely to mean a minimum of four meetings.

A quorum is the minimum number of persons who must be present at a meeting in order for it to be a valid meeting at which business can be conducted. In relation to a Trustees' meeting one-half of the Trustees is a sensible quorum (clause 7.2). An alternative, which would provide slightly more flexibility, would be for the quorum to be set at one-third of the Trustees for the time being, subject to a minimum of two trustees.

Clause 7.3 provides additional flexibility by enabling Trustees to participate in Trustees' meetings by means of a telephone conference call or other similar means, for example, video conferencing. The same rules about notice of meetings, the quorum, chairmanship, voting, minutes and so on apply to a telephone or video-conference meeting as to a meeting in person.

It will be usual for the Trustees to elect one of their number as chair of Trustees and that person will usually preside at all Trustees' meetings at which they are present (clause 7.4).

Where a consensus is not achieved on a particular matter and it is necessary for a vote to be taken the issue is determined by a simple majority of votes (clause 7.5). If a decision needs to be taken and a meeting of the Trustees is impossible or impractical then the decision can be taken by means of a written resolution but it should be noted that such a resolution is only valid if it is signed by all of the Trustees; a simple majority is not sufficient.

Each Trustee has one vote but in the case of an equality of votes the chair of the meeting has a second or casting vote (clause 7.6).

Clause 7.7 provides specific powers for the Trustees in relation to the administration of the church. Clause 7.7.2 is essential if the Trustees are to be able to delegate certain responsibilities to committees. The Trustees will remain legally responsible for the committees' acts and for this reason it is generally prudent for at least one Trustee to be on each committee. The Trustees should define the terms of reference for each committee and determine its composition, who is to be its chair and so on. It is essential in all cases to provide for committees to report back to the Trustees in such manner as the Trustees require. It is important to emphasise that in delegating to committees the Trustees remain ultimately responsible for all that goes on and must, therefore, maintain sufficient control to properly fulfil that responsibility.

Clause 7.7.4 allows the Trustees to make rules of various kinds to govern different aspects of the running of the church.

8. Application of Funds and Property

Clauses 8.1, 8.2 and 8.5 – the general position in law is that a Trustee must not benefit from his/her trusteeship and there is a common consensus that the voluntary principle of trusteeship ought to be upheld in all but exceptional circumstances. Clauses 8.1, 8.2 and 8.5 provide the exceptions to this general rule. Consequently, provided no payments are made to Trustees merely for acting as charity trustees, clauses 8.1 and 8.2 enable reasonable payments to be made to Trustees and persons connected to Trustees as employees of the church or for goods and services supplied to the church i.e. for goods and services provided otherwise than in their capacity as Trustees. In any other instance if the church wishes to make a payment or provide benefits to a trustee or a person connected to a trustee then the trustees must seek the prior written authority of the Commission.

Clause 8.3 confirms that no more than half of the Trustees can benefit directly or indirectly under clauses 8.1 and 8.2 at any given time. An indirect benefit would arise from a payment to the spouse or a dependent relative of the Trustee. If you wish a greater number of Trustees to benefit then you will need to put forward a case for such payments to the Charity Commission (see below).

Clause 8.6 sets out the procedure which must be observed where a Trustee or a person connected with a Trustee has a personal interest in a matter to be discussed at a meeting of the Trustees or any committee. It is important that this procedure is followed on every occasion so as to avoid a Trustee or a person connected with a Trustee who has a conflict of interests being involved in the decision-making process.

Conflicts of interest (that is, situations where the personal interests of the trustee conflict or may conflict with the interests of the church) may arise in other situations too. The Trustees must be aware of the potential conflicts and where such conflicts arise the Trustee concerned must declare his or her interest and should ideally play no part in the discussion and decision in relation to that particular matter. Proper management of conflicts of interest is essential

in order to show that the Trustees have at all times fulfilled their duty to act in the best interests of the church.

Clause 8.7 allows for the investment of church funds not immediately required for day-to-day use.

Since the church as a charitable trust does not have a legal identity of its own it is unable to hold land and investments (other than bank accounts) in its own name. Clause 8.8 sets out the options for the holding of land and investments in these circumstances.

Where it is proposed that more than 50% of the Trustees should receive some form of payment then this model deed will need to be amended to reflect the position and the proposal will require detailed discussions with the Charity Commission. Where the Charity Commission are not satisfied that the position can be justified the church will have to consider other options, one of which may be to establish itself as a Community Interest Company rather than a registered charity. In such circumstances legal advice should be obtained.

9. Records and Accounts

The Trustees must keep financial and administrative records in order to comply with the requirements of the Charities Act 1993 as amended. Clause 9 sets out the information which must be retained.

Clause 9.4 reflects Section 47(2) of the Charities Act 1993 as amended which requires a charity to provide within two months a copy of the latest statement of accounts to anyone who requests it in writing and pays a reasonable fee to cover the charity's costs.

10. Amendments

Amendments to the Trust Deed may well be necessary as the church develops in the future. It is usual to require more than a simple majority of Trustees to vote in favour of amendments and in this case at least a three-quarters majority of the Trustees present and voting at the meeting at which the amendments are considered is required for the amendments to be approved.

It is of the utmost importance that the Deed should not be amended in a way which makes it impossible for the church to continue to operate. Therefore, clause 10 provides that certain amendments are not valid and that certain clauses cannot be amended without the prior written consent of the Charity Commission. Additionally, proposed amendments must be confirmed by the Spiritual Leadership.

11. Amalgamation

This clause is not an essential provision but may be useful if, in the future, it is considered to be appropriate for the church to amalgamate with another church with similar objects. This clause provides for such an amalgamation provided

that it is approved by at least a three-quarters majority of the Trustees present and voting at the meeting at which the amalgamation is considered and a simple majority of the Spiritual Leadership. Obviously, legal advice would be needed to deal with the amalgamation and the procedural steps set out in clause 11.2.

12. **Dissolution**

This clause allows for the possibility of the church dissolving at some stage in the future. Again, such action would need to be approved by at least three-quarters of the Trustees present and voting at the meeting at which dissolution is considered and a simple majority of the Spiritual Leadership. If a decision to dissolve is taken then the Trustees are responsible for the orderly winding-up of the church's affairs and once all debts and liabilities are provided for any surplus assets would have to be applied directly for the objects or alternatively transferred to another charity having the same or similar objects.

The Trustees would not be relieved of their responsibilities as charity trustees until they had completed this task and sent in a final report and statement of accounts to the Charity Commission. At that stage the Commission would then remove the church from the Register of Charities.

These notes are provided merely as guidance on the provisions of the Trust Deed and do not represent an exhaustive statement of the law in relation to any of the areas covered by the Trust Deed. If the Trustees have any concerns in relation to the interpretation or application of specific provisions they should obtain legal advice. Equally, it should be noted that the Trust Deed does not deal with every aspect of church life and it is likely, therefore, that other rules and regulations (as provided for in clause 7.7) will be required from time to time to provide additional detail on particular matters.

General advice and guidance on a variety of issues is available from the Charity Commission (www.charitycommission.gov.uk)