

Information on Parish Council being a Custodian Trustee

The below information is from www.communitynorfolk.org.uk but will still apply

Custodian Trustees

Unincorporated charities do not have their own legal identity. They 'borrow' the legal identities of their trustees to enter into contracts and to own assets. When an unincorporated charity owns property or land it might appoint a Custodian Trustee to hold the title deeds on their behalf in perpetuity. The Custodian Trustee is a corporate body, such as a Parish Council or the Official Custodian of Charities. Whilst the Custodian Trustee holds the title to all property on behalf of the charity, it does not take part in the day-to-day management and operation of the charity.

So, the Custodian Trustee owns the property?

No. The property is owned by the charity. The Custodian Trustee functions as a sort of long-term 'safety box'. It means the charity's Managing Trustees can change over time without having to worry about changing the title deeds.

Is the Custodian Trustee in charge then?

Again no. The Managing Trustees are responsible and liable for the running of the charity and decision-making. The Custodian Trustee has no part in this; their one role is to hold on to those title documents for the life of the charity, and provide them if requested.

What powers do Custodian Trustees have?

- Custodianship of the property title – note that the Managing Trustees have right of access to study or copy the documents
- Furnishing the documents as required by the Management Trustees to, for example, sell or add to the property.
- Depending on the charity's governing document, they might be able to appoint new Managing Trustees; this is uncommon however
- They can charge for their services. Parish Councils tend not to do this.

Questions

Our Parish Council is specified as the Custodian Trustee. Where do our trustees representing other charities fit in?

A representative trustee from the Parish Council could be appointed (If the governing document allows) - but the Custodian Trustee has no say in the management of the charity. The Parish Councillor attending would be there as a Managing Trustee, not as anything to do with the Custodian Trusteeship.

Any trustee, whether elected or representative, should only be operating in the interests of the charity. Sometimes, representative trustees feel they are there to represent the voice of another group or organisation. This is not so. Their 'other' organisation might have an interest in the charity; for example, a village hall might have representative trustees from groups that regularly hire the premises – but those trustees should concentrate only on the interests of the charity.

We're just the management committee. Doesn't the Custodian Trustee hold liability and responsibility?

No. The Managing Trustees are responsible for management of the charity's assets and property. As an Unincorporated Charity the Managing Trustees are singularly and collectively liable and responsible for the charity and its assets.

The below information is from a Village Hall Information Sheet – www.village-hall.org

Who are Charity Trustees? The Charities Act 1993 (S97) defines charity trustees as “the persons having the general control and management of the administration of a charity”.

A village hall charity will normally have two sets of trustees (1)
Charity or Managing Trustees and
(2) Holding or Custodian Trustees.

Although they are both trustees of the charity, they have very different functions.

(i) **Charity or Managing Trustees** These are the people who manage the charity on a day-to-day basis and in a village hall this will be the management committee.

(ii) **Holding Trustees**, A village hall charity will usually provide for a second set of trustees to be appointed to hold the land or property on behalf of the charity. These are the Holding (or Custodian) Trustees. Their sole function is to hold the title to the property. They should not be involved in the day to day running of the charity, which is the responsibility of the managing trustees (unless the governing document gives them certain other rules or responsibilities).

Holding/Custodian Trustees can be either:

- (i) individuals
- (ii) a body corporate, a parish council
- (iii) the Official Custodian for Charities

Where individuals are appointed to be Holding Trustees it must be remembered that these individuals will need to be replaced from time to time, as, for example, when the present trustees die or wish to retire. For this reason, many charities prefer to choose a permanent trustee to be the Holding or Custodian Trustee, e.g., the parish council or the Official Custodian for Charities. By doing this there is no danger that the charity will be left without a Holding Trustee for any reason and, in addition, the charity is also saved the periodic expense of appointing new Holding Trustees.