

MEETING OF ROLLESBY PARISH COUNCIL

To be held on Monday 19th February 2024 at, Village Hall, Rollesby at 7pm.

Dear Councillor,

Your attendance is required at the above meeting of the Parish Council. Members of the press and public are cordially invited.

Signed:

Sarah Hunt

Sarah Hunt
Parish Clerk
13th February 2024

AGENDA

1. Apologies and consideration of acceptance for absence.

2. Members' declarations of interest and requests for dispensations.

If you have a Disclosable Pecuniary Interest in a matter to be discussed and it relates to something on your Register of Interests form then you must declare an interest. You may not participate in discussion or vote on the matter.

You have a Personal Interest in a matter to be discussed if it affects:

- Your wellbeing or financial position
- That of your family or close friends
- That of a club or society in which you have a management role

In these instances, you must declare a personal interest and may speak on the matter only if members of the public are also allowed to speak at the meeting, however you may not vote in the matter.

3. Minutes.

To receive and agree minutes from Full Council Meeting held on 8th January 2024.

4. Public Forum

To receive comments from members of the public on matters on the agenda.

5. To receive any reports:

- 5.1 County Councillor A Grant.
- 5.2 District Councillors A Grant and L Mogford.
- 5.3 Police.

6. Updates on matters not on the agenda.

To receive updates from previous meetings.

- 6.1 Bus stop installation. To receive any update. Cllr S Ridout.
- 6.2 Lloyds Bank accounts closure – to confirm that this is now closed – funds transferred to Unity on 18th January 2024.

- 6.3 Website update. Cllr C Moore.
- 6.4 Computer issues – these appear to have resolved.
- 6.5 Commemorative Beacon. Update. Cllr C Tacon.

7. Planning.

- 7.1 To consider planning applications received from Great Yarmouth Borough Council/Broads Authority for consultation prior to the meeting.
 - 7.1.1 06/23/0880/F – Hall Farm Business Park, Martham Road, NR29 5DR. Retrospective application for proposed retention and erection of 7 No. new buildings to be used as storage/workshop units and for office use.
 - 7.1.2 BA/2024/0028/HOUSEH – Broads End, Main Road, Rollesby. Proposed new access and associated works.
- 7.2 To receive notification of any decisions by Great Yarmouth Borough Council/Broads Authority.
 - 7.2.1 .

8. Administrative Matters

- 8.1 Bowls Club Lease. Cllr S Moore to report back following meeting.
- 8.2 To consider the purchase of a commemorative D Day flag.
- 8.3 To receive and agree the Financial Risk Assessment.
- 8.4 To receive and agree Internal Control Statement.
- 8.5 To note that the Clerk has completed the registration for a portrait of King Charles. To consider donation to Village Hall.

9. Finance and Governance

- 9.1 To approve payments detailed as Annex A plus any late payments received before the meeting.
- 9.2 To receive up to date bank reconciliation.
- 9.3 To consider obtaining a credit card (£50 application fee plus £3.00/month).
- 9.4 To note that the RFO does not consider a reserves policy necessary for 2023/24.

10 Correspondence

- 10.1 Email re; Back Lane traffic.
- 10.2 Letter re; Monitoring Officer Complaint.
- 10.3 Letter from Monitoring Officer re; Complaint.
- 10.4 To receive a copy of the charity commission guidance for Parish Councillors as Sole Managing Trustees.
- 10.5 Email – Norfolk Minerals and Waste Local Plan – Notification of Submission. Circulated by email.

11 Village Matters.

- 11.1 None.

12. Matters for next meeting and information.

Monday 18th March 2024

MINUTES of a MEETING OF ROLLESBY PARISH COUNCIL

held on Monday 8th January 2024 at The Pavilion, Rollesby at 7pm.

Present: Cllrs S Day, J Long, C Moore, S Moore (chair), S Ridout, C Tacon.

Clerk: Mrs Sarah Hunt

18 members of the public were present.

- 1. Apologies and consideration of acceptance for absence.**
Apologies were received from Cllr B Sturrock, alternative commitment.
- 2. Members' declarations of interest and requests for dispensations.**
None.
- 3. Minutes.**
The minutes from Full Council Meeting held on 20th November 2023 were AGREED as a true and correct record and signed by the Chair.
- 4. Public Forum**
The Council was questioned on the donation to the Recreation Ground Charity. Cllr C Moore as charity trustee hoped that the accounts would be made available to any interested parties by the Charity body. An AGM for the Charity would be considered.
- 5. To receive any reports:**
 - 5.1 County Councillor A Grant. Apologies had been received prior to the meeting by the Clerk but were not available to the meeting.
 - 5.2 Apologies were received from District Councillors A Grant see above and L Mogford – health issues.
 - 5.3 Police – no report received.
- 6. Updates on matters not on the agenda.**
To receive updates from previous meetings.
 - 6.1 Noticeboard on Village Hall external wall. Completed.
 - 6.2 Bus stop installation. This now requires traffic management at an additional cost incurring £604.41 additional cost. It is anticipated that this will be 50% funded by Norfolk County Council. It is currently scheduled for week 3 of March – the Clerk is working to bring this date forwards if possible.
 - 6.3 Lloyds Bank accounts closure – this closure forms have now been completed and will be sent imminently.
- 7. Planning.**
 - 7.1 To consider planning applications received from Great Yarmouth Borough Council/Broads Authority for consultation prior to the meeting.
None.

- 7.2 To receive notification of any decisions by Great Yarmouth Borough Council/Broads Authority.
None.
- 7.3 The Planning Protocol was adopted as presented. PROPOSED Cllr S Day, seconded Cllr C Moore.

8. Administrative Matters

- 8.1 It was RESOLVED that the Chair, Cllr S Moore, plus one other member of the Council be delegated authority to discuss the Bowls Club Lease with the Bowls committee to find a mutually agreeable way forward. The Clerk advised that a written agreement needed to be in place. A solicitor quote had been received for £1,300 to execute a lease.
- 8.2 Computer – The clerk is awaiting a report from Broadland Computers. It was RESOLVED to approve a spend of up to £600 as necessary. PROPOSED Cllr S Day, seconded Cllr S Ridout.
- 8.3 The Financial Regulations were AGREED and ADOPTED as presented. PROPOSED Cllr C Moore, seconded Cllr S Ridout.
- 8.4 The Internal Control document was AGREED and ADOPTED as presented. PROPOSED Cllr C Moore, seconded Cllr S Ridout.

9. Finance and Governance

- 9.1 It was RESOLVED to approve payments as Annex A. PROPOSED Cllr C Moore, seconded Cllr S Ridout.
- 9.2 The up to date bank reconciliation was RECEIVED showing anticipated year end balances.
- 9.3 The grounds maintenance quotes were RECEIVED for the 2024 contract.
Excite Solutions – declined to tender.
Darren Boden – declined to tender.
TTSR – declined to tender.
Maple Tree Services – declined to tender.
Garden Guardian available to meeting.
Burghwood Landscapes available to meeting.
CGM – chased prior to agenda issue.
Eddies Gardening Services available to meeting.
It was RESOLVED to appoint Garden Guardian at a price of £3,155.00.
PROPOSED Cllr C Moore seconded Cllr C Tacon.
- 9.4 It was RESOLVED to appoint Burghwood Landscapes to cut Rollesby Church – quotation received of £145.00/cut – anticipated 10 cuts. PROPOSED Cllr C Moore, seconded Cllr S Day.
- 9.5 The projected Budget for 2024/25 was REVIEWED, updated and AGREED.
Clerk to approach local developer for donation towards SAM2.
- 9.6 It was AGREED to set the precept at £32,799.00. PROPOSED Cllr C Moore, seconded Cllr S Day. This represented a 157.54% rise on 2023/24 – equating to £90.86 per Band D property, an increase per Band D property of £55.58/year or £4.68/month over 12 months.

10. Correspondence

- 10.1 Centre81 – No donation to be made.

11. Village Matters.

- 11.1 The beacon was inspected and it was agreed to remove the current commemorative metalwork.

12. Matters for next meeting and information.

Monday 19th February 2024

Monday 18th March 2024

The meeting closed at 8.16pm.

Annex A

Salaries & Office	December	£524.63		£524.63
Salaries & Office	January	£524.43		£524.43
Pension	December	£159.22		£159.22
Pension	January	£159.22		£159.22
HMRC	December	£20.20		£20.20
HMRC	January	£20.40		£20.40
Job Done window Cleaning	Bus shelter cleaning	£40.00		£40.00
Sarah Hunt	Refund one.com <i>website</i>	£91.87	£18.37	£110.24
	Top up - phone (21.12.23)	£10.00		£10.00
Wave water	pavilion jun - dec	£33.98		£33.98
Burghwood Landscapes	church yard cutting aug - nov	£580.00	£116.00	£696.00
Unity	Bank Charges sept - dec	£18.00		£18.00
	TOTAL	£2182.32	£134.37	£2316.69

Annex A - Payments for the February 2024 meeting of Rollesby Parish Council

Sarah Hunt	Salary + Homeworking February	£528.03		£528.03
HMRC	February	£21.00		£21.00
Norfolk Pension Fund	February	£159.22		£159.22
Broadland Computers	Computer testing	£40.00	£8.00	£48.00
Catherine Moore	refund steel expenses	£30.62	£6.12	£36.74
Sarah Hunt	refund one.com website fee	£91.87	£18.37	£110.24
	TOTAL			£903.23

Financial Risk Assessment Rollesby Parish Council

February 2024

RFO / Parish Clerk

Sarah Hunt

Definition of Risk Management

Risk is the threat that an event or action will adversely affect an organization's ability to achieve its objectives and to successfully execute its strategies. Risk management is the process by which risks are identified, evaluated and controlled. It is a key element of the framework of governance together with community focus, structures and processes, standards of conduct and service delivery arrangements.

This document has been produced to enable the Parish Council to assess the financial risks that it faces and satisfy itself that it has taken adequate steps to minimize them. The Council is aware that although some risks can never be eliminated fully, it has in place a strategy that provides a structured, systematic and focused approach to managing risk, which:

- Identifies the subject
- Identifies what the risk may be
- identifies the level of risk
- Evaluates the management and control of the risk and records findings
- Reviews, assesses and revises procedures if required.

FINANCIAL MANAGEMENT				
Subject	Risk(s) identified	H/M/L	Management/control of Risk	Review/Assess/Revise
Business continuity	Council not being able to continue its business due to an unexpected or tragic circumstance.	MEDIUM	<p>All files and recent records are kept in the Clerk's office. Electronic files are held on onedrive.</p> <p>In the event of the clerk being unavailable due to unexpected or tragic circumstance then Norfolk Parish Training and Support (NPTS) would be contacted to provide Locum cover.</p> <p>Unity bank are able to add an administrator to the account within 10 days.</p>	
Council Paper records	Loss through theft, fire, damage	LOW	The majority of files and all recent paper records are kept in the Clerk's office. Electronic files are held on Onedrive. Historical minutes are deposited at the archive centre, the last five years only are held at the office. These are uploaded to the website.	The office is a separate building from the house.

Precept	Adequacy of precept to enable the Council to carry out its Statutory duties	LOW	<p>The Council reviews budget against expenditure at least quarterly.</p> <p>Full Council reviews a budget and sets the precept for the forthcoming year.</p> <p>Councillors are aware of the need to increase earmarked and general reserves.</p>	<p>Increasing reserves to be raised at each budget setting meeting – a decision to increase general reserves by £7,000 was taken in the 2024/25 budget.</p>
Insurance		MEDIUM	<p>Insurance cover reviewed annually. The Council and Charity insurance is currently joint.</p> <p>Asset register is reviewed annually.</p>	<p>Councillors aware that many insurance companies will not issue joint cover.</p>
Banking	<p>Inadequate checks</p> <p>FSA savings protection rules</p>	<p>LOW</p> <p>MEDIUM</p>	<p>The Council adheres to 'Financial Regulations', which set out the requirements for banking, cheque, processing and reconciliation of accounts.</p> <p>A bank reconciliation is carried out monthly/ bi-monthly. Online banking used.</p> <p>No more than £85,000 should be held in a single Bank</p>	<p>Existing procedures adequate</p> <p>Financial Regulations are reviewed annually and review formally recorded.</p> <p>Use of online banking improves efficiency of checks.</p> <p>Currently not relevant to Rollesby Parish Council.</p>

Cash	Loss through Theft or dishonesty	LOW	The Council has no petty cash or float.	Current practice is that Clerk purchases items and claims reimbursement. Council to consider a credit card/prepaid bank card.
Financial controls and records	Inadequate checks	LOW	<p>Reconciliation prepared by RFO and checked in the meeting and signed. Two signatories are required on all payments.</p> <p>Electronic transactions are uploaded by the Clerk and then authorized by two authorized councillors.</p> <p>Internal and external audits are carried out. Internal audit is reported to Council.</p> <p>Any financial obligation must be resolved and clearly minuted before any commitment.</p> <p>All payments are resolved and clearly minuted.</p> <p>External audit report is made available to the council and posted on the Council's website.</p>	Current status reviewed and deemed satisfactory.
VAT	Re-claiming / charging	LOW	<p>The Council has financial regulations, which set out the requirements for reclaiming VAT.</p> <p>Clerk keeps continuous record of VAT payments. VAT reclaimed annually.</p>	Current status reviewed and deemed satisfactory.

Employee Salary / Pension Obligations	Failing to meet statutory obligations on TAX/NI/Pensions	LOW	Statutory requirements must be met.	Clerk utilizes HMRC Basics software and has had necessary training.
Contract Management	Administration of contracts not formally documented.	LOW	Council goes out to tender on contracts.	Contracts reported and agreed at Parish Council meetings.

ROLLESBY PARISH COUNCIL

INTERNAL CONTROL STATEMENT FOR YEAR ENDING 31 MARCH 2024

1. SCOPE OF RESPONSIBILITY

Rollesby Parish Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

The council is responsible for ensuring that there is a sound system of internal control which facilitates the effective exercise of the Council's functions and which includes arrangements for the management of risk.

2. THE PURPOSE OF THE SYSTEM OF INTERNAL CONTROL

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an on-going process designed to identify and prioritise the risks to the achievement of the Council's policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

3. THE INTERNAL CONTROL ENVIRONMENT

The Council:

The council reviews its obligations and objectives and approves budgets for the following year at its November or December meeting. The November or December meeting of the council approves the level of precept for the following financial year.

The full council meets 10 times each year and monitors progress against its aims and objectives at each meeting by receiving relevant reports from the Clerk or Councillors. Payments are approved prior to being made, invoices are available to all councillors at meetings as are bank statements and hard copies of bank statements and reconciliations.

Clerk to the council/responsible finance officer:

The Council has appointed a Clerk to the Council who acts as the Council's advisor and administrator. The Clerk is the Council's Responsible Financial Officer and is responsible for administering the Council's finances.

The Clerk is responsible for advising on the day to day compliance with laws and regulations that the Council is subject to and for managing risks. The Clerk also provides advice to help the Council ensure that legal procedures, governance, control systems and policies are adhered to.

Payments:

Payments are reported to the council for approval wherever appropriate. Two members of the council must sign every cheque or online order for payment. The signatories should consider each cheque against the relevant invoice which is provided in hard copy at the meeting and pdf for online

payments. The banking app records who has authorised each payment. All authorised cheque signatories are members of the Council. No officer of the Council is a signatory.

Income:

All income is received and banked in the council's name in a timely manner and reported to the council.

Risk Assessments/Risk Management:

The council reviews its risk assessment annually and reviews its systems and controls.

Internal Audit:

The council appoints an independent internal auditor who reports to the council on an annual basis on the adequacy of it's:

- Records
- Procedures
- Systems
- Internal control
- Regulations
- Risk management

External Audit:

The council's external auditors, submit an annual certificate of audit which is presented to the Council.

4. REVIEW OF EFFECTIVENESS

The council has responsibility for conducting an annual review of the effectiveness of the system of internal control, which should include a review of the effectiveness of internal audit. The results of that review must be considered by the Council, which should also approve the Statement on Internal Control.

Chairman

RFO/Clerk

Approved and adopted by Rollesby Parish Council

Meeting date: 19th February 2024

Correspondence 10.1.

I know this has been discussed before with no real outcome, but could you possibly put on the agenda for the 19th February (hope I am not too late) a discussion about what we as a community can do to move this on.

The way things are going sooner rather than later there is going to be a serious incident. This is now getting serious.

The Chairman of Rollesby Parish Council

Dear Chair,

I write with reference to the last Parish Council meeting, the ongoing behaviour of the Parish Council and my communication with the monitoring officer at Great Yarmouth Borough Council.

It has been confirmed by GYBC that the actions of the 'corporate' body of the Parish Council were in conflict of the principals of good governance. It is clear that there are potential conflicts of interest in the Parish Council also being the sole trustee to the playing field charity, freely available guidance from both the LGA and Charity Commission on how to manage these conflicts and to clearly separate the roles is available.

It seems Rollesby Parish Council has had difficulty understanding this and managed the dual role with minimal consideration of the community that they represent as Parish Councillors.

It is apparent, historically that there are a number of Councillors who do not wish to engage with the community regarding the playing field charity, while this has been a source of frustration to the community, the fact we are now effectively directly funding the charity means it is now no longer acceptable to 'hide' behind the smoke and mirrors of the two roles.

It is clear that the Charity has been neglected to such a state that it is now only able to exist with direct parish funding, we have a Pavilion that is not fit for purpose and is poorly maintained, with no other regular uses of the field due to its sole prioritisation of being utilised for the personal benefit of a individual benefactors business for the past 25 years.

We are also faced with the dire financial circumstances of the Parish Council budget being poorly managed for numerous years, this meant major increases in the parish precept, all of which were put forward to form a budget with no communication to the Parish. It is clear that the budget position wasn't suddenly encountered in the week between Christmas and new year, and that major discussions would have been ongoing through December, however the Parish Council decided to cancel the December meeting as there was 'little to discuss'. To my mind this would have been an ideal opportunity to have a full and open dialogue with the community to discuss the problems and get support for the solutions, but no, we as parishioners were basically left with a fait accompli position at January's meeting.

This is unacceptable and is in direct conflict with your obligations to be open, honest, transparent and act with integrity.

The best example of this being the case is the January Agenda, where an outside body/charity requested a donation, this was put on the agenda as an item for discussion, and turned down. The same consideration and process should have been followed for the Playing field charity, just because the PC are the sole trustee does not mean it can 'hide' its request to fund the charity from the parish coffers.

The disregard of the community by the Parish Council has followed a pattern as the same thing happened last year when the decisions to apply for planning for additional car boot sales were pushed through – again failing to utilise a free date in the parish calendar to discuss by cancelling the December meeting the previous year.

There is no debate that difficult decisions have needed to be made, or that in reality the correct decisions may been made, however to avoid the 'wall' that has been built between the parish and the parish council getting higher, now is the time to reset the position and work towards an open and inclusive position where the public are not excluded, and be open to accept help where it may be available. The community has recently shown how well it can pull together with the woodland, project, work with this, not against it.

I have been advised that the only action that can be taken with regards to the above concerns, would be to complain to the Parish Council directly, however I see no positive outcome in moving

forward with a formal complaint, I have no desire to see councillors 'resign' from their position, I would rather we came to an understanding and end up in a position where the PC and community work together, so suggest the following:

1. Add an item to the February PC agenda to discuss the way forward with the situation we find ourselves in including -

The Parish Council should acknowledge the fact they should have been more open and transparent with the disclosure of interests at the start of the meeting (to be fair to you Chair, when I asked the question you did look to the clerk for advice and it was the clerk that dismissed the question and advised you to proceed without) and understand that major budget deficiencies etc. should be brought to public attention and discussed before setting such vast increases

Every Parish Councillor should be asked to confirm they are agreeable to allowing the public to be informed of the Charity matters. Some indicated this at the last meeting, but I feel this should be formally declared. I would suggest if any Councillor is not agreeable to this, should consider their suitability to continue as a Parish Councillor.

A time/date should be agreed to have a separate meeting to open the charity position up to the public so that it can be advertised and publicised for attendance and interest. The more we understand and see, the more opportunities and ideas that will be available.

It is fully understood that 3 of the members of the Parish Council have been in position for less than 12 months, so cannot be held responsible for the past poor financial management of the parish budget and charitable assets, indeed it is hoped that the attitude of the PC will turn and this will take time, however the repeated missed opportunities to discuss these matters by not having the December meeting is following a continued pattern of disregard which is worrying. The 4 serving councillors who have overseen the mismanagement of the finances of both the charity and the PC budget should accept their part of the problem and apologise to the parishioners for this.

I trust this letter is taken with the understanding that it is given as constructive criticism as intended and used to be able to draw a line in the sand and move forward.

I do not claim to represent the whole community, but this has been written following discussions and communications with dozens of villagers.

10.3 Monitoring Officer Response:

I wanted to let you know that I have answered a question from a member of the public concerning the role of the Parish Council as sole trustee of the Playing Field charity. I should be grateful if you could give me a call just to confirm how this is dealt with at meetings. Broadly my response to the question appears below:

“A parish council acting as sole charity trustee acts as a corporate body: individual councillors are not themselves charity trustees, it is the parish council which is the charity trustee. Therefore, where a parish council is sole trustee, none of the parish councillors has disclosable pecuniary interest to declare in respect of the trusteeship. I would say that the same principle applies in relation to the “other registrable interests” which appear in Table 2. However, I would say that there needs to be clarity and careful and transparent decision-making where there is *potential* for a conflict of interest between the two corporate organisations. The following points should be noted:

- The parish council is not bound to provide any financial support to the charity; the charity has no automatic call on the property, personnel or funds of the parish council.
- The interests of the charity should never be over-ridden by or confused with the interests of the parish council as a local authority.
- Individual councillors do not act in a personal capacity as they would if they were a parish council appointee to an independent village hall charity. This may be seen as an advantage. However, Parish Councils acting as sole trustee (for any purpose) should be noted that individuals must act in a responsible way so as to ensure that the parish council acts properly in both roles
- Conflicts of interest can arise between the role of a parish council as charity trustee and its duty to the charity’s beneficiaries and its role as a local authority and duty to local council tax payers. In such situations councillors must be particularly careful to ensure that they ‘wear the right hat’ at meetings of the charity and act then only in the interests of the charity, and vice versa in relation to the Parish Council. Where the interests of both organisations are aligned on a particular decision (e.g. the general benefit of the community within the Parish) there would not generally be a conflict.

I hope that this goes some way to resolve your query. I have asked for a conversation with the Parish Clerk to ask how the matter is dealt with at meetings. It would be advisable that the trusteeship is openly acknowledged and recorded at the time of such decisions, however it is my view that this responsibility falls corporately and as a general principle of good governance, and not to individual Councillors under the Code of Conduct.”

Kind regards

Councillors' guide: to a council's role as charity trustee

Introduction

This guide has been jointly produced by the Local Government Association and the Charity Commission. It specifically addresses the situation where a local authority is itself the sole trustee of a charity. Many local authorities hold assets that are subject to charitable trusts. Often this is because a donor has left land or property to a council on condition it is used for a public purpose - such as a museum, art gallery or recreation ground. In such a situation the local authority has the status of charity trustee.

This brief introductory guide is intended to help councils and council members fulfil this role responsibly in accordance with charity law and to avoid some of the financial and reputational pitfalls that can occur when things go wrong. This guide does not address the wider set of issues relating to council staff or members being trustees of other charities or the relationship between local authorities and external charitable bodies more generally.

What is a charity?

A charity is an organisation or entity established **exclusively** for purposes which are capable of being **charitable** and which are for the **public benefit**. In England and Wales, charitable purposes are defined in the Charities Act 2011. Public benefit is explained in Commission guidance.

The people who serve on the governing body of a charity are called **charity trustees**. The **beneficiaries** might be the population of a local area, or a particular type of person, such as those suffering from a medical condition. Trustees have and must accept ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable outcomes for the public benefit for which it has been set up. Trustees have a duty to act solely in the interests of the charity and its beneficiaries.

A corporate body such as a local authority can also be a charity trustee. Where a local authority is trustee, the property in question is often land or buildings intended for a particular purpose; but councils as trustees can also hold financial investments or other funds, often for the purpose of awarding grants to the community. In either case, it is essential to ensure that the assets are held and applied in accordance with the charity's particular purpose.

Charity law and the Charity Commission

There are about 180,000 registered charities in England and Wales with a collective income of around £50 billion a year. All charities must comply with charity law which defines charities and how they are run.

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in order to increase charities' effectiveness and public trust and confidence in the work they do. Most charities with an income above £5,000 per year must register with the Commission.

The council's role as charity trustee

Local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This may include money or assets left by donors, or charitable trusts created by ancient royal charters or Acts of Parliament.

Local authorities are well suited to being charity trustees; in particular councils are:

- rooted in the local community;
- open and transparent in their dealings;
- highly accountable for their actions; and
- have the high standards of public conduct embedded in the way they work.



There are similarities between the rules and regulations that apply in discharging the functions of a local authority and those of a charity. While many of those underlying principles of prudence and transparency will apply equally to managing charitable trusts, there are also differences. An understanding of these differences is essential if local authority trustees are to perform this role effectively and with the minimum of risk. A number of councils have encountered problems in this area, most notably because:

- councils, used to exercising wide discretion in the way they manage their assets, may not have fully recognised and complied with the restrictions on the use of charitable assets;
- conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity;
- where assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.

Fictional Case Study A – Southbeach Borough Council

Scenario: Southbeach Borough Council plans a major refurbishment of the sea-front Pavilion Rooms, to include a new art gallery, public meeting rooms and tourist information centre. The Council's solicitor has checked and the building was left to the Council in 1948 on charitable trusts to be used for "public gatherings, artistic or cultural or other activities for the benefit of the people of Southbeach."

Issues and solutions: The promotion of tourism is not a legally charitable purpose. The Council has a conflict of interests between its desire as a public authority to promote tourism and its duty to act in the charity's interests.

As trustee, the Council must ensure that the purposes of the charity are fulfilled. Depending on the terms of the trust, perhaps a proportion of the charitable use could be accommodated within council premises elsewhere to allow a Tourist Information Centre to be incorporated in the refurbished Pavilion. Alternatively, if there is genuinely spare capacity within the Pavilion, perhaps a Tourist Information Centre could be accommodated through a commercial lease from the charity to the Council. In either case, Charity Commission advice and authorisation are likely to be needed.

Fictional Case Study B – Touchline District Council

Touchline District Council is trustee of a recreation ground in an out-of-town location which is little used. It was bequeathed in 1967 by a local citizen as a public recreation ground within the meaning of the Recreational Charities Act 1958. Last year the Council leased the site to the Touchline Football Club to facilitate their expansion plans and the Club has now laid out pitches, spectator areas and has built a substantial Clubhouse.

Issues and solutions: Under the Recreational Charities Act the facilities must be available to members of the public at large. Accordingly, permitting the exclusive use of the grounds by one club would not meet this requirement. In granting the lease, the Council has acted outside its powers and in breach of the charitable trusts. This situation may be complicated to resolve and local feelings are likely to run high, but open public access must be restored as soon as possible on this site or a suitable replacement provided by the Council. Charity Commission advice and authorisation may be required, particularly if the Council is considering an exchange of charity land for land it holds in a corporate capacity.

Managing charitable trusts safely

Local authorities have the skills, public knowledge and professionalism to manage charitable trusts very effectively but care needs to be taken to ensure that unnecessary problems do not arise. Councils and council members should be aware of the following principles:

- For a body to be a charity, it must be independent, i.e. it must exist and operate solely for charitable purposes, not as a means of carrying out the policies or directions of the local authority.
- Where a local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is "the trustee." While ongoing management may be delegated to officers, responsibility for decision-making and oversight rests with the councillors.
- The terms of the charity must be clearly understood. Nearly all problems that occur stem from a lack of clarity regarding these terms, or indeed failing to recognise that a charity exists in the first place. If there is any doubt about the terms of a charity or how they should be interpreted, appropriate advice should be sought, for example from legal advisors or from the Commission.

- The management of the charity should be kept separate, as far as possible, from the business of the local authority. Depending on the size and circumstances of the charity, it may make sense for a committee of councillors to be allocated this task. It must not be forgotten, however, that responsibility continues to rest with the whole council.
- Equally the finances of the trust must be kept separate from those of the council. The assets must be accounted for separately and income and expenditure should be channelled through discrete cost centres. The local authority may top up the finances of the trust but no funds should pass from the trust into the council's own accounts – although the council may, depending on the circumstances, recover the costs of administration.
- If the original terms of the charity can no longer be realistically followed, because circumstances have changed, the local authority should approach the Commission to see if the charity's governing document can be amended or updated. The Commission can advise on the most appropriate way of doing this.
- The Commission's registration and reporting requirements must be observed. For example, all charities must produce annual statements of accounts under charity law. Depending on the financial size of the charity, it may have to register with the Commission, or be subject to higher levels of accounting scrutiny.
- If any issues arise about whether the terms of the trust have been properly followed, the local authority should contact the Commission and work with them in finding a solution.

Fictional Case Study C – Heritage City Council

Scenario: Heritage City Council is trustee of a charity whose investments include a number of properties, with the income applicable for charitable purposes that benefit the inhabitants of the City. One large building has become semi-derelict and a developer has offered the Council £3 million for the site which it wishes to convert to a night club and casino. The Council feels obliged to accept the windfall but local residents are outraged.

Issues and solutions: As trustee the Council must act exclusively in the best interests of the charity. It must make its decision based on consideration of the charity's interests alone. The trustee must manage its conflict of interests and not take account of factors that are irrelevant to the charity (such as the Council's political interests). It must adequately inform itself before making a decision.

Taking appropriate independent professional advice, the trustee should consider whether the offer of £3 million represents the best sale price that the building is likely to achieve. The property should be marketed unless the charity's professional advisor advises otherwise. The trustee could consider whether it should take account of any risk to the charity's reputation. There may be a range of issues on which the trustee might require the Commission's advice, depending on the particular trusts on which the building is held.

In this case, however, the conflict of interest may be unmanageable because of the rules against self-dealing; the Council would have to act as both charity trustee and planning authority. The Council might need legal authority from the Charity Commission either to act notwithstanding the conflict of interest, or to bring in an independent "trustee" to act for the charity for this transaction (which might be preferable in the circumstances).

The trustee might have found it helpful to have a pro-active asset management plan in place. This might have increased the range of potential options for maximising the return on the charity's assets.

Useful Guidance

Available from the Charity Commission website www.charitycommission.gov.uk

- *The Essential Trustee* (CC3)
- *Sales, leases, transfers or mortgages: What trustees need to know about disposing of charity land* (CC28)
- *Charities Act 2006: What Trustees Need to Know* - a plain English guide published jointly by the Charity Commission and the Office of the Third Sector
- *Public benefit guidance*
- *Local Government Charity Toolkit*

Ten tips for councils in their roles as charity trustee

1. Ensure that any charitable assets, for which the local authority is the trustee, are clearly identified.
2. Make sure you are clear about the objects of the charity set out in its governing document as these dictate how any such asset may be used, in accordance with charity law.
3. Make sure that any charitable assets, for which the council is the trustee, are managed independently in accordance with their charitable purpose and any restrictions in the governing document.
4. Recognise that charity trustees have a duty to be prudent and to act solely in the best interests of the charity.
5. Ensure there is a clear line of responsibility for the management of all charities for which the local authority is the trustee.
6. Ensure that there are clear guidelines for officers and councillors about roles, responsibilities and decision making in the administration of charities.
7. Ensure you have a clear process for identifying and managing any conflicts of interest that arise where the local authority is the trustee of a charity.
8. Actively manage any charity for which the council is the trustee – keeping records up to date, submitting the necessary returns to the Charity Commission and reviewing investments, risks and opportunities on a regular basis.
9. Periodically review whether it continues to be in the best interests of the charity for the local authority to remain as trustee.
10. Follow Charity Commission guidance (and obtain appropriate advice) if you are planning to dispose of charity land, alter the charitable purpose or other terms of the governing document, or take action where trusts have become dormant.