

guide to churches on spiritual leadership and trustees

May 2009

stewardship[®]

PO Box 99, Loughton, Essex, IG10 3QJ

t: 020 8502 5600

e: enquiries@stewardship.org.uk

w: www.stewardship.org.uk

This Briefing Paper and others like it are provided free of charge and help a great many churches and charities. Their development involves many hours of dedicated professional expertise both from within and outside of Stewardship. They are provided at our own cost as part of our mission to equip you.

If you find the material in this Briefing Paper to be of value, we would invite you to respond in the following ways:

- Subscribe to receive our email bulletins at our website, www.stewardship.org.uk; and
- Tell others in your church or charity about our resources.

If you regard the material to have been of particular help and significance to you in your work (for example using it to inform a church or charity group/network) perhaps you would consider making a financial gift to Stewardship in appreciation (though please feel under no obligation).

CONTACT DETAILS

Stewardship

PO Box 99, Loughton, Essex IG10 3QJ

t 08452 26 26 27 or 020 8502 5600

f 020 8502 5333

e enquiries@stewardship.org.uk

w www.stewardship.org.uk

Stewardship is the operating name of Stewardship Services (UKET) Limited, a registered charity no. 234714, and a company limited by guarantee no. 90305, registered in England

© Copyright Stewardship 2009

COPYRIGHT

This publication is the copyright of Stewardship. We want our resources to have the maximum impact, therefore you are welcome to reproduce or otherwise distribute this material in whole or part. We simply ask two things: (1) there must be no use for commercial gain, and (2) Stewardship is clearly acknowledged with the following wording "Reproduced with permission from Stewardship. www.stewardship.org.uk". If extracts are to be used in another context, permission should be sought in advance by emailing enquiries@stewardship.org.uk or telephoning 020 8502 5600. Thank you.

DISCLAIMER

Whilst every care has been taken in the preparation of this material, Stewardship cannot be responsible for action taken or refrained from in reliance thereon. It is recommended that appropriate professional advice be sought in each relevant individual circumstance.

table of contents

	Page
1 Introduction	2
2 Spiritual Leaders and Legal Trustees	2
3 What options are there?	7
4 The new model documents	7
Features of the model deed:	8
5 Charity Formation by Stewardship	8
6 Other legal help	9
7 Some Questions & Answers	10

1 Introduction

These notes are issued by Stewardship to give guidance on the relationship between spiritual leaders and legal charity trustees.

They also give some guidance when a church has a strong ethos of leadership by its spiritual leaders, on how this can be incorporated into its legal governing documents.

They summarise what is available, and why, and give pointers to further help and information.

2 Spiritual Leaders and Legal Trustees

2.1 Spiritual leaders and trustees: are they the same?

The Bible has a lot to say about church leadership. The history of the church over the centuries and in different parts of the world shows that there is not one single way that this is worked out and this guide is not the place to provide a summary of what that may mean and how it may happen for each church. However, the primary source of the guidance on this is in the New Testament supported by the Old Testament.

Churches in the UK are not only 'spiritual entities' but, in almost all cases, also legal charities. As a result they need to be guided not only by spiritual principles but also by UK charity law and Charity Commission guidance.

Charity law calls those that are responsible for the governance of charities "Trustees". Charity Trustees are defined as the people responsible for controlling the management and administration of the charity. They may be called trustees, directors, managing trustees, committee members or other titles but it is the role that they play that determines whether they are legally 'Charity Trustees' or not.

There can be confusion in church settings as to whether the spiritual leaders of a church are therefore always going to be the 'charity trustees' given their role in the spiritual direction of the church. However, the Charity Commission accept that 'charity trusteeship' is not the same as the 'spiritual leadership' of the church. To help clarify this distinction work was undertaken by a working party involving the Charity Commission, Stewardship, the African and Caribbean Evangelical Alliance and the solicitors, Anthony Collins.

The result of this 'joint venture' was a charity governing document, in the form of a model deed, intended to help churches that wished to have a clear sense of spiritual leadership based on biblical principles whilst also acknowledging the UK charity law understanding of 'trustees'.

Wording in the model deed used phraseology to distinguish the roles and includes such paragraphs as:

"The spiritual leadership of the church shall rest with the Spiritual Leadership. If there are Trustees who are not members of the Spiritual Leadership then their role shall be confined to the management and administration of the church in accordance with the provisions of this deed and general law"

"The Trustees of the church shall fulfil their legal duties having due regard to the spiritual direction of the church as set out from time to time by the Spiritual Leadership acting always in accordance with the requirements of this Deed and the general law."

2.2 Leadership: setting the sense of direction

The essential concept of 'where are we going' is required in all dynamic organisations. In a normal (i.e. non-church) charity this may come from the 'management team' or it may come from the trustees. It may come from the working together of the two. This depends on the gifting and is often best if it is from the mix of the two.

Essentially in church contexts the authority to lead comes from the spiritual 'calling' rather than legal authority. To be effective it needs to be recognised by all those involved in leadership (and normally by others – those that need to be lead).

It must be recognised that the legal authority within a UK charity rests with the legal trustees and it is their ultimate responsibility to keep the charity within its legal framework and also to be part of the policy making team.

Using the analogy of a sailing ship:

- Neither the spiritual leaders nor the legal trustees control the wind – that blows where it will!
- The legal trustees may not necessarily initiate the choice of destination of the legal charity (which is dictated by 'the captain'; the spiritual leaders under the authority of Christ) but they should not be at odds with it.
- The trustees may plot the detailed course (be the navigator) or may not, but they must agree to it (i.e. be more than the steersman simply taking orders) and will also have a part to play in keeping to the course that is set.

There can be tensions as to how the destination is set involving 'who is the boss'. We would comment that the best teams would be those that understand the following principles:

- spiritual submission to spiritual leadership is essential,
- legal submission to the legal trustees is essential,
- psychological understanding is important – especially in the area of finance!
- humility is critical (compare "I am your servant but you are not my master")
- The spiritual leadership also need to be aware of the provisions of the charity's governing document and to observe them. However, there may be a sense of direction and call that is outside of these and it is then necessary to see how that can be outworked legally.

2.3 Trustees: do they have an important role in 'church'?

It seems to us at Stewardship that the answer to this question is a definite "yes"! We would say the following:

- It is a legal requirement.
- It is a vital leadership support role -- if handled properly.
- A serious impediment -- if handled wrongly.
- It is not to be taken lightly, but also
- Nor is to be feared – as some do.

From our experience we would say that the key to the role being played well is having a good knowledge of what the role involves:

- Seeing it in the context of a 'God given' team of people – involving trustees, spiritual leaders and others.
- And avoiding:
 - Trustees entering into areas that are not their responsibility.
 - Trustees becoming too detailed and controlling.
 - Trustees being marginalised and playing a 'notional' role.

The following is intended to help build that knowledge of what are the respective roles of spiritual leaders and of trustees and to help in them work well together.

2.4 The spiritual leaders as the trustees?

There is a good case to start from the position of making your spiritual leaders and trustees the same people. There is inevitable overlap in the two roles.

This has the benefit of simplicity. For some situations, however, there may be a concern over both the skills that the spiritual leaders may lack (see further comment below) or over the concentration of power in the hands of one group.

We would also add a vital legal point which churches have overlooked at their own cost. For paid or salaried 'leaders' to be trustees:

- There must be specific power defined in the charity's governing document to allow this (see below).
- The 'paid trustees' cannot be a majority of the trustees.
- The Charity Commission will expect to see certain other safeguards in the governing document to ensure that the power to pay trustees is not abused.

2.5 The trustees as a separate group?

There can be a case for a separate group of trustees that are different people from the spiritual leadership so that they can 'assess', from the legal and administrative perspective, the direction given from the spiritual leadership.

This has the benefit of widening the group of those in the church who have some form of legal authority and also introduces some sense of 'checks and balances'.

One disadvantage is that this brings in an inherent question of the role of spiritual leaders to 'lead the church'. There is also a significant potential for the 'overlap of responsibilities' to create problems of friction unless there is regular involvement and communication between the two groups. We find that there is a tendency for this structure to more easily result in a 'control mentality' which is a major source of friction and eventually relationship breakdown between trustees and spiritual leaders.

To see how it may best work in an individual church it is worth looking at some of the important aspects.

2.6 Strategy: trustees and spiritual leaders.

Strategy of the legal entity which is the 'charitable company' or 'charitable trust' is an essential element of trusteeship: but a vital aspect is realising this is as 'stewards' (controlling and managing assets on behalf of another).

The legal trustees are part of a team and normally 'the team' will comprise:

- The trustees

- The spiritual leaders
- The 'executive' team (if different)
- External advisors
- The church members – in certain respects; as those that need to be led.

The role each group plays in each circumstance will critically depend on the different gifts within each part of the team.

- Are the spiritual leaders individuals who have 'charity/business' experience?
- Does the spiritual leadership contain those with administrative gifting or eye for detail?
- Does the spiritual leadership have those who have the time for the legal detail?
- Do the trustees have those who can handle well the role of supporting but challenging?
- Do the trustees have those who are people of faith who are committed to the vision of the church?
- Do the trustees have people who can handle the concept of liability and risk?
- Are all concerned those who have a sense of proportion?

2.7 Financial decisions: the interaction of trustees and spiritual leaders.

It is often in finance decisions and budgetary discussions that the greatest friction occurs between trustees and management teams. The reason for this can be any or all of the following:

- Trustees are not 'hands on' and therefore there is a greater distance from the day to day events and therefore often a greater fear of not being in control.
- Trustees are those ultimately responsible and will be those first criticised externally. They will also have an awareness of personal responsibility (and sometimes personal liability). That can make them more cautious.
- Trustees are often drawn from people who have professional skills. That can lead to a more technical approach and a greater knowledge of what can go wrong rather than practical experience in handling the implications of that.
- Trustees are often older. As people get older they very often become more 'risk averse'.
- The spiritual leadership team are more often 'visionary' or otherwise motivated by the desire to achieve what they are working to do. Restrictions which are seen as 'unnecessary' or 'over cautious' can lead to serious frustration.
- They are 'hands on' and often more aware of how things are going and what can be done to correct things. This can make them aware of possible flexibilities but also if it means restricting staff income/conditions they have to face it personally on a daily basis.
- Staff are often drawn from younger and more practical groups. That can lead to a lack of awareness of what can go wrong and how difficult it is to reverse earlier hasty decisions.

Understanding these issues can help enormously in preventing different perspectives becoming disagreements.

2.8 Handling differences and relationships

A trustee is required to act in the best interests of the charity not of any individual or of any other body. To do so requires an 'independence of mind' so that judgements are made by them to that end.

Trustee relationships fall down – both internally within the trustee body but more often externally with leadership or management teams – normally for reasons that are not fundamentally over matters of principle but over matters of style or other 'personal' reasons.

The keys to preventing difficulties arising are:

- Be personally committed to the work and vision of the charity – not one's own personal part in it. You are only a steward not the owner. It is just possible that it may best be served by you not being part of it!
- Have an understanding of the roles undertaken and pressures facing the others (this is particularly so between trustees and spiritual leadership teams where they are not the same people).
- Invest in personal relationships with the others (whoever 'the others' may be).
 - This helps appreciate the qualities and gifting of others.
 - This helps understand the motivation of others.
 - This helps 'soften the heart' when personal hurts arise.
- Appreciate that teams tend to work best when they have different types of people – some arrive at decisions quicker than others – and that is a very useful balance.
- Consider investing in books/guides/training on team work.

2.9 The things to remember once difficulties do arise:

Our advice is to apply the following:

- Be quick to listen and slow to speak.
- Take advice – from someone who understands the alternative view.
- Remember the Old Testament Proverbs say "wisdom is found in the counsel of many".
- Remember the New Testament instruction to "Make every effort to maintain unity in the bond of peace".
- Be humble.
- Pray!

2.10 Selection of trustees

Given Trusteeship is an important role we would suggest that care is given to their selection. It is up to each charity to select their own trustees but we would suggest the following as a help in this process:

Spiritual characteristics

- Mature, responsible, trustworthy

- Normally we would suggest they are actively involved in the life and work of the church – though there can be a case for a trustee who is more removed to bring an outside view, or to meet a skills need.
- For ‘church based’ work, it is best if the trustees are committed to the vision and values of the church, and able to work with church leadership as well as the ‘management team’.
- These “qualifications” are likely to be more important than any professional or other specialist skills or knowledge, given the essentially spiritual nature of churches and Christian charities. See below for further comment on ‘skills’.
- Must be able to sign the ‘statement of beliefs’ in the governing document if this is a requirement of the document.

Skills

- A range of suitable skills, knowledge and experience can be helpful
- It is also always possible to get specialist input without necessarily appointing the person as a trustee (The Stewardship ‘consultancy helpline’ is an example).
- Non-trustees can attend trustees meetings and contribute as required, but without being part of the decision making group.

Legal requirements & exclusions

- Over 18
- No unspent conviction for an offence of deception or dishonesty
- Not an un-discharged bankrupt
- Not someone who has been removed from trusteeship by the Charity Commission or a Court
- Not someone disqualified under the Company Directors Disqualification Act 1996

3 What options are there if we want a governing document that recognises the role of ‘spiritual leaders’?

If a governing document with ‘leader led’ principles is wanted there are the following options:

- (a) Model documents agreed with the Charity Commission – see Section 4.
- (b) Stewardship’s tailored charity formation service – Section 5.
- (c) Other legal help – see section 6.

4 The model documents

Model documents have been produced by a working party featuring Charity Commission staff, lawyers from Anthony Collins Solicitors and Stewardship, and representatives of ACEA and Evangelical Alliance. They were prompted particularly by the needs of and concerns within the Black Majority Churches community: here the

challenge of combining standard legal governance with spiritual leadership principles has been especially strong.

They will not suit all churches, for instance, those based on a congregational form of church government. Churches within established denominations will usually have their own forms of structure and governing documents.

There are three legal forms/structures provided.

(1) **Trust Deed (or Declaration of Trust)**. This is the most commonly used form of governing document for churches. It comes with a set of guidance notes. These help the people setting up the charity to understand what it all means, and how to complete sections where there are alternative provisions.

(2) **Company memorandum and articles**. It is becoming more common for churches to be formed as charitable companies. The company structure offers benefits in terms of protection against liabilities of trustees, and the ownership and transfer of land or other property beyond those of the Trust. For more on the pros and cons of Trusts v Companies, please refer to the separate briefing paper on the Stewardship website at www.stewardship.org.uk/briefing_papers.htm (under legal & property).

(3) **Constitution (unincorporated association)**. This is not to be confused with a church constitution that deals with beliefs and practices, church officers and governance, etc. This is a legal structure for a charity that is used usually for smaller, local bodies, that have a wide, but not necessarily active, membership, and an elected management committee (the trustees) who usually serve for a year at a time. We do not recommend this as a good structure for all but the smallest churches.

These documents and the guidance notes can be downloaded from the following web page: www.eauk.org/modeltrustdeed.

Features of the model deed:

- Objects (purposes) that cover advancing the Christian faith, relieving sickness and financial need, including general counselling, and advancing education. These objects should be more than wide enough for the needs of most churches.
- Recognition of spiritual leadership distinct from the trustees, and appointment of trustees to be by such spiritual leadership.
- Provision to include paid church leaders among the trustees; provide they are not in a majority.
- Amendment and dissolution (winding up) requires the agreement of the spiritual leadership.

Otherwise the deed contains many of the usual powers that would be expected in a modern charity trust deed.

5 Charity Formation by Stewardship

Stewardship offers a charity formation service which can include use of the principles of 'leader led' churches in documents developed specially for church and Christian charity clients by us and our external solicitors.

Advantages of using this service:

- It is tailored to what you need. Churches may have other requirements and these can be built into the governing documents in a way that is legally effective.
- It is continually being updated. The world changes and so does what is best to be done. Stewardship documents are updated to reflect what is best for churches.
- It saves time. The leg work is done for you by experienced professionals.
- It saves uncertainty. Stewardship's team are forming many charities each week. As a result they know what the regulators require and what will cause problems.
- Advice is provided. You can talk to the team and get answers to your questions.

Disadvantages of using the service:

- We think the only one is that of cost. There is a cost to the service, but we keep this as low as possible and it tends to be well below most professional providers. Details of the fees are shown on our website: <http://www.stewardship.org.uk/fees3.htm>. These start at £500 plus VAT.

Details are available from www.stewardship.org.uk/charity_formation.

Stewardship also offers a 'conversion package' designed for churches that want to move to the new model.

This has two elements:

1. Initial assessment: "Is it practical for the church to adopt the new model – with or without some desired amendments; or, do we need to establish a new charity?"
2. Conversion: The initial decision having been made, the preparation of the documents, liaison with the Charity Commission and any associated legal work (e.g. transfer of assets and liabilities) will be then undertaken for the church.

For more information, including costs, and for an application form, go to www.stewardship.org.uk/charity_formation

Stewardship can also provide a 'helpline' service for churches. For a low fixed cost per year you can pose questions to Stewardship's consultants. This covers legal, financial and property related issues.

Details can be found at www.stewardship.org.uk/consultancy_helpline.htm.

Details of all our services, including payroll, accounts examination, Gift Aid administration, and employment contract pack can be found at www.stewardship.org.uk.

6 Other legal help

- Different denominations will usually have their own specialist firms of solicitors they can point member churches to.
- Anthony Collins Solicitors is a substantial, Christian led legal practice based in Birmingham, with a large and knowledgeable Charity Law team. Contact Phil

Watts on 0121 212 7450 or email phil.watts@anthonymcollins.com. Phil was closely involved with the design of the model documents.

- Ian and Margaret Gardner, of solicitors Lawson Lewis, are very experienced in Christian charity formations and work closely with Stewardship in this area. Contact number: 01323 720142
- We work Coffin Mew Solicitors of Southampton, who have a department specialising in Charity Law. They can be contacted on 023 8033 4661 or email peterfellows@coffinmew.co.uk.

7 Some Questions & Answers

Q – Where can I get Model Deeds from?

A – You will find them at: www.eauk.org/modeltrustdeed. There is also a link from Stewardship’s website at www.stewardship.org.uk/links.htm.

Q – Can we use the models but make changes?

A - Yes, but take great care. The more changes you make, the greater the likelihood it will create problems with the Commission. If you do make changes, highlight them and send a copy with the changes clearly marked to the Commission.

Q – Is there a fee to use the new documents?

A – There is no fee – they are freely available. Should you instruct a lawyer or some other service provider to form and register your charity, they may, of course, use the documents and will charge fees for their overall service.

Particular recognition and thanks needs to go to Anthony Collins Solicitors, who, through Phil Watts, have done the lion’s share of the drafting, with input from Stewardship and others.

Q – How important is it to get good legal advice?

A – It can often, usually even, make a real difference. The model documents with the guidance notes have been designed to be as user-friendly as possible. The danger of problems is also reduced the fewer the number of changes made. However, a good legal advisor with the necessary specialist knowledge can avoid potential pitfalls and smooth and speed the process. Poor, non-specialist advisors can have the opposite effect, so choose carefully.

Q – Does an independent church have to use the models? Will they be treated better by the Charity Commission?

A – No – these documents are not compulsory. Use of them may lead to quicker processing because the Commission have already approved the content.

Q – Do you have to be a new church to use the model documents? Can an existing church with an existing governing document convert to one of the new documents?

A – It is relatively easy for a new church which can simply use the new model trust deed from the outset. Churches which have an existing legal structure/charity may well be able to convert. They have to consider a number of things:

- Is there a power within the existing governing document to amend it? If there is, you have to follow its provisions. It may, for example, prevent some of the key provisions being amended (e.g. the charitable objects (purposes), or a winding up provision). It

may require consent from the Charity Commission or a denominational HQ for some changes. It will all depend on your own situation.

- If there is no power to amend, special permission from the Charity Commission (a Scheme) would be needed. This can be quite a long and complicated process and you need to consider how much you want or need the new structure.
- If you have the necessary power to amend, or can get the consents needed, you can approach and obtain from the Charity Commission agreement to use the new document. This should be freely given as the new documents are agreed models. The relevant department is Charity Support rather than Registrations.
- Suitable legal advice and help is usually required. For more on this, see section 5 "Charity formation by Stewardship".

Q – What is involved in converting from an existing charity structure?

A – First, see the above answer. As to the broader process, there may be a number of aspects:

- A decision has to be made by the trustees of the existing charity first.
- It may be possible to amend the existing charity (as discussed above), in which case it will retain the existing charity registration number.

If a new charity is required:

- The new charity has to be set up. If the old one is to be wound up, the name can probably be carried over to the new (though names can be problematical). The structure is chosen and the legal work carried out. Note there will be a new charity registration and registered number.
- The assets and liabilities of the existing charity then have to be transferred to the new one. This will almost certainly require legal advice and help and a Transfer Agreement is normally used. Identifying all the assets and liabilities and doing the practical things, like getting consents where required (e.g. maintenance contracts) to transfer them, can be a major exercise.
- Wind up the old charity. There are some fairly simple procedures for this when the assets are below £5,000. But be aware that there may be reasons to keep an existing charity going, e.g. there may be a property that cannot easily be transferred to the new charity or the existing charity may be named as a beneficiary of future legacies. Knowledgeable legal advice can be very valuable.

Q – Where can I get good advice and help with these things?

A – See section 5 for what Stewardship offers. In terms of advisors we know well and can recommend see also section 6.