

the powers and responsibilities of charity trustees

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Other Resources

These notes, though quite detailed and covering a range of matters, cannot guide you through all aspects of the trusteeship and administration of church charities.

We encourage you to look at the other materials produced by Stewardship which are being added to and updated on a regular basis.

There are substantial, paid for resources, like a Risk Management Toolkit and an Employment Contract Pack for church leaders. But we also offer a lot of free briefing papers. Details are available from our website – www.stewardship.org.uk – or you can call our office.

Make sure you are signed up to receive our regular legal and financial bulletins and consider subscribing to our Consultancy Helpline service – giving you inexpensive prompt help and professional advice throughout the year by telephone or by e-mail.

legal aspects

1 Different churches/different structures

1.1 Identifying the trustees

- Their title or description may vary according to the type of church.
- The type of assets over which they are trustees may vary from just the building to the funds and equipment of the church or to both.

Examples:

- In a new church setting, with generally modern Trust Deeds, the trustees will be described as such and be responsible for funds, equipment and any buildings.
- In a Baptist situation, the deacons are normally the trustees with responsibility for the general funds and administration, but with the buildings often in the name of a corporate trustee.
- In an Anglican situation, the trustees are the Parochial Church Council, with the buildings normally held by the Diocesan Board, but with the Church Wardens responsible for the management.

Other denominations have different permutations.

1.2 The Charities Act 1993 provides a functional test. Charity trustees are those persons having the general control and management of the administration of the charity.

2 The role of the Charity Commission

2.1 Parliament has provided that the Charity Commission have five objectives as follows:

- a) increasing public trust and confidence in charities;
- b) promoting awareness and understanding for the 'public benefit' requirement of charities (introduced by Charities Act 2006);
- c) promoting compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities. Here, administration refers to trustees' governance role rather than administrative tasks!
- d) promoting the effective use of charity resources;
- e) enhancing the accountability of charities to donors, beneficiaries and the general public.

(Section 1B Charities Act 1993, as inserted by Charities Act 2006)

2.2 In addition, the Charity Commission has general functions which include:

- encouraging and facilitating the better administration of charities;
- identifying and investigating apparent misconduct or mismanagement in the administration of charities;
- taking remedial or protective action in connection with misconduct or mismanagement;

- obtaining, evaluating, disseminating information connected with their objectives or functions.

(Section 1C Charities Act 1993 as inserted by Charities Act 2006)

2.3 In performing its functions, the Commission must act in a way that encourages charitable giving and voluntary participation in charity work. Their regulatory practice should be proportionate, accountable, consistent and transparent and targeted only at cases where action is needed.

(Section 1D Charities Act 1993, as inserted by Charities Act 2006)

2.4 Powers of the Charity Commission

To allow them to fulfil their role of investigating and checking abuses, the Commissioners have significant powers. These include the following:

- a) to institute enquiries into a charity and to require any person to answer any enquiries on oath and produce such documents as may be required and provide an explanation of the documentary evidence. It is an offence, knowingly or recklessly, to provide false or misleading information;
- b) to act quickly to protect the property of a charity by suspending a trustee or officer of the charity and appointing additional trustees and by appointing a receiver/manager to take over the administration of the charity, by himself or in conjunction with the other trustees. The costs of all this are to be borne by the charity.

2.5 A source of information

The Commissioners publish a range of very useful booklets which are available online (see www.charitycommission.gov.uk/publications/ccpubs3.asp)

The Booklet "CC3: The Essential Trustee: what you need to know" and "CC3a: The Essential Trustees: An Introduction" are important texts for new trustees and those that feel that they need to understand more about their role and responsibilities.

2.6 Approaching the Charity Commission

A polite but firm approach will normally produce the best results. If you feel you are encountering a legalistic or obstructive approach from one of their officers, you can always ask for the matter to be referred to someone with more authority and experience. In extremis, Charities Act 2006 provides for an Appeal Tribunal to hear appeals against legal decisions of the Commission.

The Commission are, however, there to help and resort to the Tribunal should be rare.

3 Charitable status of churches and charity registration

3.1 Introduction

Churches are classified as charities as they exist to fulfil the charitable purpose of advancing the Christian religion. There is a basic duty on charity trustees to register with the Charity Commission.

These notes set out the present position (as at June 2009)

The present position

There are presently three possible circumstances whereby a church may **not** be required to register:

- a) **Excepted charities:** - churches previously excepted by regulations made under the Charities Act. The Charities (Exception from Registration) (Amendment) Regulations 2007 apply to churches connected with (amongst others) the Church of England, the Church in Wales, the Methodist Church, the URC, the FIEC, the various Baptist and Congregational trusts and the Presbyterian Church of Wales. Churches within these main historic denominations are covered by this exception. However, with effect from 31st January 2009, the Excepting Order only applies if income is below £100,000 per annum. If income is above that, then registration with the Charity Commission is now required.
- b) **Very small charities:** - where annual income is less than £5,000 per annum.
- c) **Registered places of worship:** Note: this relates to the building and not to separately administered congregational funds. Registration of a place of worship does not involve the Charity Commission. It is arranged through the Local Authority Registrar. But see 3.3 below as to whether there is additionally a requirement to register with the Charity Commission, where a church group which meets in the building and has income of over £5,000 per annum.

3.2 The exception from registration regulations (ERR)

Churches that fall within the ERR and with an annual income of less than £100,000 per annum (see paragraph 3.1 (a)) can continue to enjoy their 'excepted' status until 1st October 2012.

Churches outside of the ERR should register whatever their income level unless they fall within paragraph 3.1 (b).

3.3 A building trust and separate congregational funds

The question arises as to whether the collection and application of the funds of a congregation constitute a charity requiring registration with the Charity Commission, even though the building is a registered place of worship.

In many church situations, the trusts of the building are quite separate from the trusts of the congregational funds. Often, there are two separate bodies of trustees for each. In the latter case, if there is no formal Trust Deed, the trustees are probably the elders or other leaders. If the building is a registered place of worship, there is no need for registration of the **buildings trust** with the Charity Commission. Subject to any other available exceptions: if the congregational funds are separately administered from the buildings trust, they will not come within this exception. Equally if the buildings trust and congregational funds are dealt with within one trust deed, the charity as a whole is likely to require registration with the Charity Commission.

3.4 So should we register or not?

The main benefits to churches of charitable status are the tax relief and the support services provided by the Charity Commission. If a church is not required to register with the Charity Commission, it can obtain a reference for tax relief from HMRC Charities (0845 302 0203) on application. You will need to send a copy of your trust deed or other governing instrument and your most recent accounts. In addition, the "authentication" of a charity registration number gives members of the public, grant funders, suppliers, etc. a level of credibility and confidence in the charity.

For those that are required to register with the Commission, there are additional benefits in having a modern Trust Deed drawn up which will provide a sound and flexible legal framework for the financial affairs of the church.

A summary of the pros and cons of registration:

| | ADVANTAGES | DISADVANTAGES |
|----------------------------------|--|--|
| REGISTERED | <ul style="list-style-type: none"> ▪ Will be fulfilling a legal duty if not within one of the exceptions/exemptions. ▪ Formally establishing a new trust gives a clear, flexible legal framework with a wide range of powers. ▪ Clarity about who the trustees are and what their obligations and powers are. ▪ Charity Commission will keep charity up to date with changes in the law, etc. ▪ Prompted to comply with the Charity Accounting Requirements. ▪ Can show the community that you are accountable. ▪ May be easier to obtain grants. | <ul style="list-style-type: none"> ▪ Have to file accounts, examination/audit report, trustees' report, etc, with the Charity Commission. ▪ Have to comply with requirement to show registered charity status on cheques and financial documents. ▪ Have to complete Charity Commission annual return. ▪ Any problems are more likely to come to light (on one view this would be a good thing!) ▪ Cannot avoid keeping up with the requirements (again, this may be seen as positive) ▪ Charity is on the Charity Commission 'radar'. |
| REGISTRATION NOT REQUIRED | <ul style="list-style-type: none"> ▪ Don't have to file accounts, etc, just have them available. ▪ Will probably already have obtained charitable status with the HMRC and be getting tax relief, therefore nothing more to be gained in financial terms. | <ul style="list-style-type: none"> ▪ Easier to be out of touch. ▪ No prompt to keep up with the requirements. ▪ May be lingering confusion over just who the trustees are and what powers they have. ▪ Finding out that, legally, you are a charity trustee only when something goes badly wrong, is not good news! |

3.5 Changes to charity registration under Charities Act 2006

3.5.1 The threshold for compulsory registration has increased from £1,000 to £5,000 per annum income. In addition, the permanent endowment or use/occupation of land criteria for registration has been removed.

3.5.2 Trusts and companies which are still legally charities, but below the registration threshold, can still be recognised by the HMRC for tax relief purposes (e.g. Gift Aid tax claims).

3.5.3 It is open to a small charity that is not legally required to be registered, to voluntarily do so.

4 Responsibilities and powers of trustees

4.1 Definition, qualifications, appointment and retirements of trustees

4.1.1 Legal definition

"Charity trustees means the persons having the general control and management of the administration of a charity". (Section 97(1) Charities Act 1993). The legal

definition of a charity trustee is, therefore, a wider, functional test, rather than referring simply to those persons who are called trustees in legal documents.

- 4.1.2** To identify the trustees, check the charity's "governing document". This will be a Trust Deed, Memorandum and Articles of Association (if a company charity) or exceptionally, a Constitution. Persons are normally named as trustees. Subsequent changes to the trustee body will normally be recorded in writing in documents such as Deeds of Appointment or Retirement of Trustees.

Check the provisions of the Charity's Governing Document to establish the exact procedure for appointment or retirement (more detail is given at paragraph 4.1.5 below). If the Governing Document is silent on the matter, a legal Deed will be required on each occasion.

- 4.1.3** According to the legal definition of a charity trustee (S97(1) Charities Act 1993), it is possible that persons fulfilling the *function* of trustee may additionally be regarded as trustees, despite not being named as such in a legal document.

This is unlikely to cause problems unless something goes wrong. For example, a complaint is made against the charity or the Charity Commission have cause to investigate. However, it is best practice for the trustees to both act together as a body and keep written (legal) documentation up to date in this area. The advantages of this are:

- trustees themselves have the protection of knowing who is 'acting' as a trustee. Trustees are legally responsible "jointly and severally", which means each are responsible both for their actions and for those of their fellow trustees.
- if someone in a quasi trustee role took it upon themselves to represent the charity without the trustees' knowledge, the trustees would have a stronger defence against any issues arising if the charity is well run and changes are promptly documented.
- if the charity wishes to buy, sell or mortgage land, up to date documentation will save unnecessary delays and legal costs and possibly avoid commercial opportunities being lost.

4.1.4 Qualities of Trustees

Charity trustees do not necessarily need to be specifically qualified. However, they should be:

- a) responsible and trustworthy;
- b) actively involved locally in the life of the charity (so that effective management can be exercised);
- c) committed to the vision of the charity and, in the church context, if not a leader, able to work with them;
- d) it is best practice for the trustee body as a whole to possess a range of skills and experience relevant to the charity.

4.1.5 Appointment and retirement of Trustees

It is very important to keep the trustee body up to the strength required by the Trusts. See your trust deed for any minimum number.

The method of appointment will depend first of all on the provisions of the Governing Document. This may provide for appointment **by resolution** at a meeting of the

trustees duly **recorded in the minutes**. Otherwise, appointment is by a formal **Deed of Appointment** - If the Trust property includes land, it is important that a formal Deed of Appointment, or (if there is power in the Trusts to appoint by resolution) a **written Memorandum** recording a resolution appointing a new trustee is used.

The appropriate written record of the appointment should be kept with the Trust documents - so the chain of trusteeship can be identified easily whenever necessary. This is particularly important if trust property includes buildings and there is a sale or mortgage.

Retirements - Check the trust provisions. It may be that all that is required is notice in writing. If there is mortgaged property and the retiring trustee is a party to the mortgage, he will require a formal transfer or conveyance of the property, with the lender joining in to release him from his obligations. Otherwise he remains liable. Short of this, he may obtain an indemnity from his co-trustees in a Deed of Retirement.

4.1.6 Compulsory land registration and new trustees

From 6 April 2009, where a new trustee is appointed to an unincorporated charity which holds land (including a lease of more than seven years) which is unregistered, compulsory registration with the Land Registry is triggered. Registration is required within two months and a fee, based on the value of the property, is payable (Land Registration Act 2002 (Amendment) Order 2008).

Each time a new trustee is appointed, a further Land Registry fee is payable to register the new trustee.

Unregistered land can be registered voluntarily, for which there is a 25% discount in fee. Registration can help avoid future land ownership disputes.

Appointing a corporate trustee (such as Stewardship) to hold the charity's land avoids the administration and costs associated with changes of trustees.

4.1.7 Removal of a Trustee

Is there power? If so, follow it. If not, little can be done. A trustee who is out of the United Kingdom for 12 months or more can be removed by the appointment of a new trustee in his place, but short of this, the intervention of the Court is necessary.

4.2 Remuneration of Trustees

4.2.1 This is an important subject and these notes give just the general principles. A separate more detailed briefing paper, 'Payment of Trustees', is available from the Briefing Papers page of our website www.stewardship.org.uk. The Charity Commission have also published guidance on this subject which can be downloaded from their website (charity-commission.gov.uk) entitled "CC11 - Trustee expenses and payments".

4.2.2 In broad terms (and subject to 4.2.3 below):

- remuneration (including 'expenses' that is, in reality, remuneration) is not possible without a specific power within the charity's Governing Document;
- this general prohibition also applies to remuneration paid to persons closely connected with a trustee;
- new Trust Deeds can provide for the remuneration of trustees, usually in limited circumstances (for example, subject to paid trustees not being a majority, provisions to manage the conflict of interest when remuneration is set, etc). In this context, remuneration of one or more full time paid church leaders is acceptable;

- the Charity Commission are increasingly open to agree to the amendment of an existing trust to include a power to remunerate a trustee, but not retrospectively;
- if there is no express power to remunerate a trustee, he should receive no payments except in respect of reasonable out of pocket expenses. Payments made to a trustee without the necessary power will be a breach of trust and the trustees could be required to make up the loss to the trust;
- in relation to a paid minister being a trustee automatically by virtue of his office, e.g. Anglican vicar or Baptist minister, with no specific provision regarding trustee remuneration, it is hard to see the Charity Commission objecting, where it is well established practice within the main historic denominations. They do take a different view with newer church structures, where it is considered essential to have the specific power.

4.2.3 Charities Act 2006 provides a major relaxation for payment to trustees for services. If the following conditions are met, a trustee or person connected with them may receive remuneration:

- the amount or maximum amount of remuneration is set out in an Agreement in writing between the charity and the person receiving remuneration;
- the trustees are satisfied that entering into such an Agreement would be in the best interests of the charity (taking account of their legal duty of care);
- the total number of trustees remunerated (together with their connected persons who are also trustees) constitute a minority of the total number of trustees;
- there is no provision in the trusts of the charity that prohibit the payment of remuneration.

4.2.4 Remuneration **cannot** be paid under the above provision of Charities Act 2006 to a trustee in respect of their duties **as a trustee** or as **an employee** of the charity.

4.2.5 The Charities Act 2006 provisions do not override any entitlement to pay remuneration which is authorised by the trusts of the charity, an Order of the Court or the Charity Commission or any other statutory provision.

4.2.6 In entering into the Agreement in paragraph 4.2.3, the trustees are obliged to have regard to Charity Commission guidance on the making of these agreements. The person(s) benefitting under the Agreement are not permitted to have any part in relation to any decision or other matter in relation to the Agreement.

4.3 General responsibilities of trustees

4.3.1 To administer the Trusts in accordance with the Trust Deed

Trustees need to be aware of the provisions of the original trust document and to observe them. Each trustee should have a copy of the trust document and its provisions should be considered at regular intervals.

4.3.2 To be active in administering the Trust

There should be no "sleeping" trustees. If powers are delegated to a subgroup of the trustees, the remaining trustees should make sure they are informed of any action that is taken and pass any appropriate resolution.

4.3.3 Trustees' Duty of Care and Liabilities

A trustee is required to act in the best interests of the charity. Part of this requires the trustees to "exercise the same degree of care in dealing with the administration of their charity as a prudent man of business would exercise in carrying out his own or his business affairs."

This means that a trustee can be held liable if he acts without such care and thereby causes a loss to the charity. The position regarding liabilities of trustees is a little complex but can be summarised as follows:

- a) trustees are jointly and severally responsible. They act collectively (usually by majority decision unless their Trust Deed specifies otherwise) and actions taken and agreements entered into by one or more Trustees affect the others. Therefore, if a minority trustee is particularly unhappy about a certain course of action decided upon by the majority, his ultimate option is to resign. Short of this, he should have his objections recorded in writing in the minutes of any meeting.
- b) There are two basic types of liability that a trustee may incur:
 - **Liability for breach of trust.** A breach of trust occurs when the trustees act outside their powers, e.g. using funds for the wrong purposes, or without proper care. If a loss to the charity results, the trustees can be required to make it up from their own resources.
 - **Liability to third parties.** This is not a matter of trust law but of contract or tort. If, for example, the trustees enter into a building contract, they are liable to pay the contractor the price of the work whether or not there are sufficient funds in the charity's bank account.
- c) If trustees are in doubt about any particular course of action they propose to take, they can ask the Charity Commission to advise in writing. They can rely on any written advice given by the Commissioners. If, then, a breach of trust is committed, the trustees are protected from liability. It is important to get the advice in writing and not to rely on a telephone conversation.

4.3.4 The charitable company limited by guarantee option

Some charities are established as charitable companies as an alternative to the trust structure. In this structure, the trustees have greater protection from claims from third parties against their own assets (i.e. the second form of liability in (b) above). Directors/trustees of a charitable company still owe the same duty to the charity itself, not to act in breach of trust (i.e. the first form of liability in (b) above).

In the case of a company, a separate legal entity exists. This means that any debts owed by the company are indeed owed by the company and not by the trustees personally. This assumes that the trustees have not given personal guarantees or entered into contracts in a personal capacity.

Summary of main differences between trusts and companies

| ASPECT | TRUST | COMPANY |
|--|---|--|
| Personal Liabilities | <ul style="list-style-type: none"> Trustees have potential liability to third parties and could be liable for breach of trust | <ul style="list-style-type: none"> Trustees/directors are protected from personal liability to third parties (unless entered contracts, etc., in a personal capacity). Can still be liable for breach of trust. |
| Holding legal title to property | <ul style="list-style-type: none"> In names of trustees – there is a cost of transferring title each time there is a change of trustees. | <ul style="list-style-type: none"> In name of company so the charity is unaffected by changes of trustees. |
| Formalities | <ul style="list-style-type: none"> Simpler to operate | <ul style="list-style-type: none"> Various Companies Acts requirements – these can be quite onerous |
| Accounting requirements | <ul style="list-style-type: none"> Generally less onerous. When income exceeds £250,000 p.a., the requirements are equivalent. | <ul style="list-style-type: none"> Generally more onerous and complicated, even at lower income and certainly below £250,000 p.a. |
| Set-up costs | <ul style="list-style-type: none"> Cheaper | <ul style="list-style-type: none"> More expensive |

4.3.5 To exercise effective financial control and keep proper accounts

This is where “the rubber hits the road”. Financial control and record keeping is a key area for trustee care and the area the regulators, such as Charity Commission and HMRC, will most focus on.

See later sections for more detail on accounting requirements. We have published a separate, detailed briefing paper on our website entitled, “Financial controls in churches/ charities”, available from the Briefing Papers section of our website.

4.3.6 To meet regularly

The trustees need to meet as often as is necessary to carry out the effective management of the affairs of the trust and to fulfil their duty of care. An annual meeting may well be sufficient in the case of a trust which deals only with church buildings. More frequent meetings will be required in the case of a congregational trust. Three or four formal meetings a year may be appropriate.

If the trustees are also the spiritual leaders, trustees meetings could be incorporated into leaders meetings. Separate minutes of trusteeship matters should then be kept.

Unless the trusts provide otherwise, majority decision making applies. It is normal to appoint a chairman of the trustees to chair meetings and a secretary to be responsible for keeping minutes. Meetings should always be minuted, with all decisions carefully recorded and the minutes kept safely.

- See **Appendix B** for a sample form of minutes.
- See **Appendix C** for a detailed guide to holding effective trustees meetings.

4.3.7 To be aware of the condition of any land and buildings

Trustees are required to maintain any land and buildings held in trust, but only to the extent that they have funds for that purpose.

4.3.8 To ensure adequate insurance cover is in place

- a) **Buildings insurance.** Buildings should be insured for the full replacement cost. Be careful to ensure the sum insured does not lag behind real costs over time. Trustees should ensure they see the insurance premium renewal receipt each year.
- b) **Other insurance.** Trustees must ensure that all the property and assets are properly insured. There must also be insurance in respect of liabilities to third parties, particularly public liability insurance and, if appropriate, employers liability insurance.

Further detail on the types of insurance that charity trustees should consider can be found in our Briefing Paper, "Introduction to Insurance for Churches and Charities", available from our website.

4.4 Amending your trusts

4.4.1 If a change to the terms of a Trust Deed is contemplated, it is necessary to check the Deed itself to see if there is power to vary the trusts and the extent of that power. Follow the terms of the power carefully. The changes would normally be effected by a Supplemental Trust Deed/Declaration of Trust being prepared and signed.

4.4.2 It is the duty of charity trustees to ensure that their charity's governing document keeps up with changing needs and unforeseen eventualities and to ensure the charity's continuing effectiveness.

4.4.3 The following broad principles apply to the amendment of a charity's governing document:

- A charitable company can amend its Memorandum and Articles of Association by entering into an appropriate resolution of the Company. However, some alterations are 'regulated' and require prior Charity Commission approval. These include any change to the objects (purposes) clause, changes to winding up provisions and any changes to the authority to benefit trustees (directors or connected persons, including in relation to remuneration).
- Unincorporated charities **with an income of £10,000 or less** per annum can change their governing document, even where it contains no power to do so. In practice, this is achieved by resolution taking effect 60 days after submission to the Charity Commission (assuming that they raise no objection). The trustees are free to use any specific power to amend their charity's governing document if this is simpler.
- Unincorporated charities **with an income of over £10,000** per annum can generally change administrative and procedural powers. This is by statutory authority of Charities Act 1993. That authority does not extend to power to change the objects (purposes), to spend capital held as 'permanent endowment' or to authorise trustee remuneration or benefits. Authorised changes are effected by a resolution of the charity which must be sent to the Charity Commission.
- An unincorporated charity with an income of over £10,000 per annum can only make a change to its objects (purposes) if:
 - a) the governing document provides that power (which is unusual), or

b) the Charity Commission grant a Scheme (a legal document prepared by them) allowing the change. See the next paragraph;

Similar requirements as to a resolution, submitted to the Commission, apply to (a).

4.4.4 Charity Commission Scheme

The Charity Commission will only agree to a Scheme in this context in limited circumstances. Broadly, these are when the current objects (purposes):

- can no longer be carried out in the way contemplated in the governing document;
- have been fulfilled or are adequately provided for by other means (e.g. through public funding);
- do not provide a use for all of the charity's property or income;
- use outdated definitions of beneficiaries, area, places etc.;
- are no longer charitable in law;
- are no longer a useful way of using the funds or property of the charity.

A Scheme may also be used where two or more charities with similar objects wish to merge, but do not have power do so.

4.4.5 Where a charity has property settled on old trusts which current trustees want to change, but with no power to do so, there is potentially another solution:

- If there is a power of sale in the original trusts, consider using the power in section 36(9)(b) of the Charities Act 1993. This provides that where the sale is "to another charity otherwise than for the best price that can reasonably be obtained and is authorised to be so made by the trusts of the [selling] charity", there is no need for consent of the Commissioners or to get advice, advertise, or sell at the best possible price. The Charity Commission have previously interpreted this to permit sale from one church to another at a nominal price, providing the charitable purposes are the same or very similar. This will normally be the case (both advancing the Christian faith). This opens the possibility of establishing a new trust and transferring the property for a nominal sum out of the old and into the new trust. The old trusts effectively come to an end because there are no more assets.
- In these circumstances, it will be prudent to obtain the Charity Commission's agreement to this course of action, in advance, since it is the case that the same body of persons form the trustee body of both the old and the new trust, this could be regarded as a "connected persons" transaction (see 4.6.2)
- Be aware that if the new trust has wider objects than the old, the use of the building may be restricted to activities fulfilling only the objects as may have been in the original Trusts.

4.5 Delegation of powers/functions

4.5.1 Does the charity have power to delegate and, if so, what is the extent of it?

4.5.2 Any sub-group should report back to the trustees as a whole. Notes of meetings of the group should be copied to all trustees.

4.5.3 Keep in mind that the trustees as a whole remain responsible for any actions taken by a sub-group.

4.5.4 Delegation to your treasurer. Being treasurer is a heavy burden. Make sure there is adequate support and accountability. Consider use of management accounts (i.e. showing month by month actual income and expenditure in the various categories compared to budget and to previous year's equivalent figures). Such procedures are part of the trustees' duty to have in place effective financial controls.

4.6 Land transactions

4.6.1 Introduction

These notes draw attention to the general requirements. Charities involved in the sale or mortgage of their properties should always obtain the appropriate professional advice at the time.

4.6.2 Sale of Charity land

a) By default, a Charity Commission or Court Order is required to sell land. However, provided the trustees:

- obtain and consider a written report on the proposed sale from a qualified surveyor instructed by the trustees and acting exclusively for the charity;
- advertise the proposed sale for such period and in such manner as the surveyor has advised in his report; and
- decide that they are satisfied, having considered the surveyor's report that the terms on which the sale is proposed to be made are the best that can reasonably be obtained for the charity,

then, no Order is required (Section 36 (3) Charities Act 1993).

b) Sale at less than market value

Neither an Order of the Charity Commission or Court nor a report under Section 36 (3) will be required in the following circumstances:

- where the sale is "to another charity otherwise than for the best price that can reasonably be obtained and is authorised to be so made by the trusts of the [selling] charity" (Section 36(9)(b) CA 1993) ;
- the Charity Commission permit section 36(9) to apply to a sale by one church to another at a discount. This means that you can sell to another church at less than market value, even for a nominal sum. In these circumstances none of the requirements to take advice or advertise apply. It may be prudent, however, to notify the Commission of the action you propose.

c) Sale to connected persons

Where the sale is to a "connected person", an Order will always be required. A "connected person" includes trustees or someone who has donated land to the charity or a close relative of either, or an institution in which such a person has a substantial interest.

4.6.3 Mortgaging charity land

An Order of the Charity Commission or the Court will be required In order to mortgage charity land, unless the trustees have obtained and considered proper advice given to them in writing on the following matters:

- whether the proposed loan is necessary in order for the charity trustees to be able to pursue the particular course of action in connection with which the loan is sought by them;
- whether the terms of the proposed loan are reasonable having regard to the status of the charity as a prospective borrower; and
- the ability of the charity to repay on those terms the sum proposed to be borrowed. (Section 38 (3) CA 1993).

"Proper advice" is the advice of a person "who is reasonably believed by the charity trustees to be qualified by his ability in and practical experience of financial matters and who has no financial interest in the making of the loan in question" (Section 38 (4)).

This can be somebody internal to the charity provided they have the necessary ability and experience. It is not clear whether it could be a trustee, but it is normally accepted that they can.

Accountants, solicitors, surveyors (provided they have the necessary experience) and bank managers should be able to give this advice.

4.7 Publicity requirements (declaration of charitable status)

4.7.1 A registered charity with a gross income in excess of £10,000 per annum must state that it is a registered charity on documents relating to financial matters, including any appeal or request for funds, orders for money or goods, invoices, and cheques.

4.7.2 There is no specified form of wording. Any of the following would suffice:-

- "A registered charity",
- "Registered with the Charity Commission",
- "Charity registration number 123456",

or a combination of these.

4.7.3 There is no requirement that these details be printed. Therefore, where circumstances justify, they may be handwritten or added by (e.g.) adhesive label or rubber stamp.

4.7.4 A person issuing or signing such a document as mentioned above without the appropriate declaration of registered charity status will be committing a criminal offence.

4.7.5 It is particularly important that the note of registered charity status appears on all printed cheques. There is no specific requirement for the wording to appear on general notepaper, but since this may be used for one of the above purposes, e.g. an invoice, it is wise to include it.

4.8 Trading and charities

4.8.1 Most churches are unlikely to find themselves embarking on trading in any significant way. However, certain contemplated activities may constitute trading and the "rules" are examined briefly here.

4.8.2 The General principle

Charities, including churches, should not engage in permanent trading activities. Charities by definition should exist and operate for "exclusively charitable purposes" and trading would usually be inconsistent with this.

4.8.3 Permitted exceptions

a) Trading in fulfilment of the objects

Where the trade is exercised in the course of fulfilling a primary object of the charity ("primary purpose trading"), it is permitted. For this reason, Christian book shops can be constituted as charities, as the Christian literature is sold with the view of advancing the Christian faith. Likewise, churches are free to produce and sell books, audio tapes and videos of Christian content.

b) Fundraising Trading

Limited trading of a fundraising nature is permitted and tax will not become payable on the profits of the trade provided the turnover does not exceed:

- £5,000, or
- if the turnover is greater than £5,000, 25% of the charity's total income from all sources (not just trading income), subject to an overall maximum of £50,000.

5 Charities Act 2006 - summary of key changes

5.1 Trustees should be aware of the significant changes brought about by Charities Act 2006. The following is a brief summary. A more comprehensive review is provided in our Briefing Paper: "Charities Act 2006 explained".

5.2 Summary of Key Features

5.2.1 A new definition of charity, based on the existing concept of public benefit and adding to the existing 3 main heads of charity a further 9 new heads, and a catch all head that allows for other purposes analogous to those purposes.

5.2.2 The advancement of religion is retained as a charitable purpose and the Parliamentary debates on the Bill gave reassurance to churches that there is no threat to their status.

5.2.3 The need for greater clarity in the annual reports and accounts to report on how the activities of the charity provide the public benefit. This should not present difficulties to Christian church and charitable activities.

5.2.4 Changes to charitable purposes, legal structures and constitutional provisions are made easier.

5.2.5 Charitable Incorporated Organisation ("CIO")

The Act provides for a new legal form for charities, the CIO. Currently, for a charity to get the benefits of incorporation (for example, limited liability of membership/trustees), it has to be set up as a charitable company. This involves a fair degree of cost and complexity: such charities have to report not

just to the Charity Commission, but also to Companies House with differing requirements.

5.2.6 Features of the proposed Charitable Incorporated Organisation:

Once introduced, the CIO is likely to become the structure of choice. Charities thinking of converting from a trust to a company may choose to wait for the introduction of the CIO which, at the time of writing, is not expected to be available until mid 2010. The main features of the new CIO are:

- it will be an incorporated body, in the same way as a traditional limited company, and will, therefore, have its own legal identity. This means that all assets of the charity can be held in the name of the organisation and not need to be in the names of the trustees for the time being;
- the members/trustees of the CIO will have a limited liability. Note that this relates to potential claims from third parties and does not relieve trustees of their duty of care to the charity itself;
- there will be the option of foundation or membership formats. This means there will only be the need for the two tiers of trustees and members if the organisation has a genuine membership;
- existing (or new) charities will be given an automatic statutory power to convert to the CIO format;
- there will be transfer mechanisms to ease the conversion from existing charitable companies to CIOs.

5.2.7 Audit Threshold

Charities with an income of up to £500,000 can benefit from an independent examination rather than a full statutory audit.

5.2.8 Remuneration of trustees

New powers for payment of charity trustees in limited circumstances (see 4.2.3ff, above)

5.2.9 A new Charity Appeals Tribunal as a first line of appeal against a decision of the Charity Commission

5.2.10 Significant changes to charity registration requirements plus removal of the excepted charities category for all charities with an income over £100,000 per annum (See Section 3).

6 Relationship between spiritual leaders and trustees

6.1 Introduction

6.1.1 Spiritual leaders and trustees have separate but overlapping roles. The potential for problems arises at the overlap.

6.1.2 A general distinction of roles is:

- Spiritual leaders are responsible for the health of the local church and the faithful pursuit of God given vision. They are accountable to God and may be, or make themselves, accountable to others in higher/overseeing leadership, dependent on the church/denomination government structure.

- Trustees are responsible to see that the church as a charity is administered in line with its stated charitable purposes and that it keeps within legal requirements. They are accountable to the Charity Commission, the church, and to the public generally.

6.1.3 There is no essential conflict in these two roles.

6.2 Overlap

6.2.1 The Trust is not the church. It is the legal vehicle providing an administrative framework for the affairs of the church. It is there to serve the church.

6.2.2 Spiritual leaders have the spiritual responsibility and authority to govern the affairs of the church. This will include setting and pursuing vision, development of leadership and church discipline. This is not and need not be the province of trustees.

6.2.3 Probably the main area of overlap concerns the application of funds. Legally, this responsibility rests with the trustees and yet may be seen as part of the role of spiritual leadership. Tension can arise in this area. Spiritual leaders may be concerned that the trustees will muscle in and take over relying on their legal authority. Trustees may be concerned that they will be squeezed out of the decision making process while still carrying the legal responsibility for decisions made.

6.3 Reasons for having spiritual leaders as trustees

6.3.1 Both sets of responsibilities rest in the same people. Provides clarity and simplification.

6.3.2 Avoids the potential problem of spiritual leaders making decisions and trustees rubber stamping, or conversely, trustees usurping the spiritual leaders' authority.

6.3.3 Avoids the possible separation of heart and vision between trustees and spiritual leaders.

6.4 Reasons for separating the role of trustees and spiritual leaders

6.4.1 Remuneration obstacle

6.4.2 Spiritual leaders may not wish to be occupied in administration.

6.4.3 Provides accountability for the spiritual leaders within the local church.

6.5 Possible models

6.5.1 Model A: Spiritual leaders and trustees synonymous.

If this model can be adopted, it does provide the greatest simplicity. Whenever the spiritual leaders are meeting, the trustees are meeting as well. Trustees meetings can be convened within the context of leaders meetings to pass necessary resolutions. Trustees participate fully and are fully consulted throughout.

6.5.2 Model B: Mixture

a) The trustees under this model might be all non-remunerated spiritual leaders, or a mixture of spiritual leaders and others.

b) Choice of trustees who are not spiritual leaders - sharing heart and vision, particular skills/experience or function within the church.

c) Features:

- the Trustee body as a whole retains responsibility for general financial administration of the church charity. The trustees as a whole ought to meet sufficiently often in the year to set the annual budget, to approve annual accounts and to consider major decisions;
- the trustees could then delegate day to day management to a sub-committee consisting of the spiritual leaders who are trustees and other spiritual leaders who may not be trustees (typically full time paid leaders). They would want a proper reporting system probably including some form of monthly management accounts;
- the terms of the trust probably require a specific power to delegate functions in this way.

6.5.3 Model C: Trustees and spiritual leaders quite separate

Depends on church government structure how this is viewed. May be the least comfortable to operate.

6.6 Where the trustees and spiritual leaders are not the same people

6.6.1 Great care has to be taken over effective communication and functioning between the two groups

6.6.2 Is about mutual care and service – recognising the responsibilities carried by each and supporting each other

6.7 Other points

6.7.1 Trustees as employers of paid leaders.

The trustees will be the ones actually employing any paid leaders. If the trusts include provision for remuneration of trustees, any paid leaders should remove themselves from the decision making process.

6.7.2 Spiritual leaders as quasi-trustees.

Spiritual leaders who are not technically trustees, but who effectively exercise the powers of trustees, can be held responsible by the Charity Commission for breaches of trust in the same way as trustees. This should not be the case if it is clear that their decisions, when affecting the legal and financial position of the Trust are submitted to the Trustee body.

6.7.3 The topic of spiritual leadership and trustees is explored in more depth in our Briefing Paper, “Guide to Churches on Spiritual Leadership and Trustees”.

financial aspects

7 Accounting requirements

7.1 Introduction

7.1.1 These notes are a general introduction to this subject. Stewardship produces more detailed guidance at the Briefing Papers section of our website.

7.1.2 The Charities Acts contain detailed requirements for the keeping of accounting records, the production of annual accounts, the audit or examination of accounts, making accounts available to the public and, where relevant, the filing of an annual report with the Commissioners. Charity Accounting Regulations made under these Acts flesh out the detail and practical application. These notes are a basic overview of the statutory requirements.

7.2 Accounting records

7.2.1 Overview

The requirement to keep “proper accounting records” applies to all charities, whatever their size, and whether registered or unregistered.

7.2.2 Detail

The trustees must ensure that accounting records are kept which record the financial transactions of the charity on a day to day basis. These records must:

- show and explain all the charity's transactions;
- disclose at any time, and with reasonable accuracy, the financial position of the charity at that time;
- provide a breakdown of all sums received and spent, identifying the matter in respect of which the transaction took place;
- contain a record of the assets and liabilities of the charity;
- enable the trustees to ensure that statements of account, which satisfy the statutory requirements, can be prepared.

7.2.3 The accounting records must be kept for a minimum of six years, even after the charity may have ceased to exist.

If proper accounting records are kept, the requirements above can fairly easily be met. If not, the consequential effect can be serious.

7.3 Statements of accounts and audit/examination

7.3.1 Overview

Legal requirements vary depending upon the annual income of the charity. The requirements set out here apply to all charities other than large company charities.

7.3.2 Charitable Companies

There have been a number of changes to the audit and independent examination regime for charitable companies in quick succession. This has led to a good deal of confusion. In overview, the minimum statutory position for company charities is as follows:

Financial years starting before 27 February 2007:

- Gross income up to £90,000 – no statutory external scrutiny
- Gross income £90,000 to £250,000 and gross assets not more than £1.4 million – ‘Reporting Accountant’s Report’ under company law
- Gross income above £250,000 (or below £250,000 and gross assets above £1.4 million) – full statutory audit by a registered auditor under company law.

Financial years starting between 27 February 2007 and 31 March 2008

As above, but substitute £500,000 for £250,000, and £2.8 million for £1.4 million.

Financial years starting on or after 1 April 2008

- Regulatory law changed from Company Law to Charity Law for ‘small’ company charities:
- Gross Income less than £10,000 – no statutory external scrutiny
- Gross income £10,000 - £500,000 and gross assets not more than £2.8 million – Independent examination under charity law
- Gross income above £100,000 and gross assets more than £2.8 million – Statutory audit under charity law
- Gross income over £500,000 – statutory audit under charity law
- Income over £6.5 million; more than 50 employees; gross assets over £2.8 million: if two of these 3 exceeded – statutory audit under **company** law.

Financial years ending on or after 1 April 2009

- As for 1 April 2008 but substitute £25,000 for £10,000, £250,000 for £100,000 and £3.26 million for £2.8 million.

7.3.3 Summary of the requirements

This summary now applies to all charities, except charitable companies must not prepare receipts and payments accounts.

| Gross income pa | Minimum requirements |
|-------------------------------------|--|
| Over £500,000 ¹ | Full Accrual Accounts Audited by professional auditor Detailed Annual Report |
| £250,000 - £500,000 ² | Full Accrual Accounts Examined by an Independent Examiner Detailed Annual Report |

¹ For larger charitable companies, company law rather than charity law defines the accounting requirements. See paragraph 7.3.2;

² A £3.26 million gross assets test may result in a full statutory audit. The £250,000 income/£3.26 million assets test in paragraph 7.3.2 above applies to both company and non-company charities.

| | |
|--|--|
| £25,000 - £250,000 | Simplified Receipts & Payments Accounts Examined by an Independent Examiner Simplified Annual Report |
| £5,000 - £25,000 | Simplified Receipts & Payments Accounts No need for Independent Examination or Annual Report |
| Less than £5,000 (and unregistered) | Simplified Receipts & Payments Accounts No need for Independent Examination or Annual Report |

7.3.4 Explanation of Terms

These are important definitions in determining which category a given church falls into.

- a) **Gross income** is defined to include all income from all sources including separate funds which are under the control of the trustees. Where receipts and payments accounts are prepared, this is simply the cash receipts recorded, excluding any receipts classed as capital ("endowment").

Where accruals accounts are prepared, gross income is the gross incoming resources of the charity (as shown in its Statement of Financial Activities in its annual accounts), but excluding amounts received as capital ("endowment") and any gains from disposal of fixed assets or investments or asset revaluation gains. It will however include any sums transferred to **income** from endowment (capital).

Trustees should be aware that, if gross income is already in one of the higher brackets above, in exceptional years they could well find that their accounts need a full professional audit.

- b) **Full Accrual Accounts** (all company charities and non-company charities where gross income exceeds £250,000 p.a.). These must be prepared in accordance with the Regulations made under the Charities Acts.

The scope of these notes does not permit further exploration of this detailed subject. Suffice to say, if you are required to prepare accruals accounts, you need expert help and advice, which Stewardship can offer through our Accountancy Services Team.

- c) **Simplified Accounts** (non-company charities with gross income not exceeding £250,000 p.a.). An election has to be made by the trustees to prepare simplified accounts. These accounts should include:

- a receipts and payments account,
- a statement of assets and liabilities;
- explanatory notes for all material matters not disclosed in the Annual Report (see below).

Note: Unrestricted funds and all different types of restricted funds (e.g. building fund) should be distinguished from each other. Standard forms of accounts offering a ready-made format complying with the recommended practice are available from the Charity Commission – see their website, www.charitycommission.gov.uk.

- d) **Professional auditor**: someone professionally qualified to audit company accounts, such as a chartered accountant, who is also a 'registered auditor'.

e) **Registered auditor:** a qualified accountant who is registered with a relevant professional body permitting them to audit company accounts. Registered auditors are subject to additional regulatory standards.

f) **Independent examiner:** an "independent person who is reasonably believed by the Trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts." The examiner is required to carry out their work in accordance with regulatory Directions and Guidance published by the Charity Commission. If the charity has income over £250,000, the examiner must be a suitably qualified member of one of the main professional accountancy bodies or an FCIE (a Fellow, not an associate, of the "Association of Charity Independent Examiners")

The following points apply:

- For an examiner to be independent he should have no connection with the trustees which might inhibit the impartial conduct of the examination. This will exclude anyone closely involved in the church's administration, a major donor or beneficiary, or a close relative of such persons. It may, therefore, include a church member not coming within the above categories.
- The sort of person it could include would be an accountant or retired accountant, a local authority treasurer, and somebody with a senior position in the financial sector, such as a bank or building society manager.
- The examiner is not required to form an opinion as to whether the accounts show a true and fair view as an auditor would when carrying out an audit. Instead their duties are set out in Regulations under the 1993 Act. Examiners are bound to report to the trustees and, in some cases, the Charity Commission, if specific matters come to their attention during an accounts examination.
- Whilst examiners do not have to be professionally qualified, they will have a duty of care and should, therefore, have suitable professional indemnity cover in place.
- There will be a big difference between examining simplified accounts and full accruals accounts. Where accruals accounts are prepared, the examiner should be someone who understands the principles of accruals accounting—normally an accountant. If gross income exceeds £250,000, the law requires that the independent examiner is a qualified member of one of the professional accountancy bodies or is a fellow of the Association of Charity Independent Examiners.
- If a church's trusts require it to have a professional audit, save in exceptional circumstances, it cannot opt for an examination, even though it is below the audit threshold. However, it can seek to change its governing document to overcome this (see Paragraph 4.4 above).

7.3.5 Submission and keeping of Accounts

In the case of registered charities with a gross income of more than £25,000, statements of account must be sent to the Commission within ten months of the financial year end.

For excepted charities the accounts do not have to be sent to the Charity Commission, but must be made available to the Commissioners if required or to any member of the public who requests a set.

Statements of accounts must be kept for at least six years.

7.4 Annual report

7.4.1 Overview

All registered charities must prepare a trustees' Annual Report. Those with a gross income of over £25,000 must also file this with the Charity Commission.

7.4.2 Detail

The report would be expected to include:

- the charity name and any other names by which it makes itself known;
- charity and company registration numbers (if applicable);
- its principal address;
- description of the trusts;
- the names of the charity's trustees at any time during the year;
- who has power to appoint charity trustees;
- description of the organisational structure of the charity;
- a description of any assets held by the charity on behalf of another charity;
- the main activities of the charity to further its purposes for the public benefit, and the main achievements during the year;
- where gross income exceeds £500,000, further detail on activities, aims objectives, strategies, contribution of volunteers and a risk management statement amongst other matters;
- a statement that the trustees, when considering the activities of the charity, have had regard to the guidance on public benefit produced by the Charity Commission.

A simple report is sufficient for charities where the gross income or total expenditure does not exceed £500,000. A sample of a simple Annual Report is at **Appendix E**

7.5 Annual returns

7.5.1 Application

To registered charities with a gross income exceeding £10,000 only.

7.5.2 Detail

A standard form has to be completed and filed with the Charity Commission within ten months of the financial year end.

The Annual Return requirements can be summarised as follows:

Income less than £10,000

The Charity Commission request that a simple update form be completed. This is not an annual return as such, but helps trustees meet their duty to keep their registration entry up to date.

Income between £10,000 and £25,000

Only Part A of the full annual return needs to be completed. This is similar to the Update Form for small charities.

Income between £25,000 and £500,000

Part A and a "Reporting Serious Incidents" Declaration need to be completed.

Income between £500,000 and £1 million

In addition to Part A and the RSI Declaration, Part B (giving more detailed financial information) must be completed.

Income over £1 million

Parts A, B and C and the RSI Declaration must be completed. Part C is the SRI (Summary Information Return).

7.6 Accounts available to the public

All charities, whether registered or unregistered, must make their accounts available to the public if requested. The trustees' statutory annual report must be provided with the accounts. The accounts should be supplied within two months of the making of the request and a reasonable charge can be made.

7.7 Criminal sanctions

Failure to comply with any of the accounting requirements set out above could lead to criminal prosecution of the trustees. It has been indicated that, in practice, prosecutions will be rare and a last resort. They are likely to come in the event of wilful and persistent default, or in very serious cases.

7.8 Risk management

All charities with an income over £500,000 are required to state whether the trustees have given consideration to the major risks to which the charity is exposed and satisfied themselves that systems or procedures are established in order to manage those risks. Separate resources are available from Stewardship on Risk Management, including a special toolkit by visiting www.stewardship.org.uk/consultancy_helpline.htm.

8 Gift aid & other tax-effective giving

8.1 HM Revenue & Customs (Inland Revenue) approach

There has been a change of approach by HMRC (Inland Revenue) since the early 1990's. A simplified claims procedure, which has freed resources within HMRC Charities in Bootle from claims administration to investigation and audit, makes it more likely that a church will receive a visit from an HMRC at some point to check that all the Gift Aid records, etc., are in order. The fact that claims may have been processed and repayments made without question over a number of years does not amount to a seal of approval from HMRC.

If a church should be notified of an inspection, it should obtain a copy of the HMRC guide "Inspection of Charities Records - Code of Practice".

8.2 Gift Aid

8.2.1 Summary of Key Points:

- any gift in the form of a payment of money from a tax-paying donor can count as a Gift Aid payment, however large or small;
- for each £1 gift under Gift Aid, the charity can reclaim 25p tax and, until April 2011, 3p transitional relief;
- this therefore presents great opportunities for charities to increase income;
- donors give a single "Gift Aid Declaration" which can authorise the charity to reclaim tax on all future and limited past donations, until the donor cancels their declaration;
- the Gift Aid Declaration must be retained safely by the charity, as it is essentially a request/authority to the church/charity to reclaim tax at the basic rate on the donor's giving;
- a Declaration can be obtained from the donor either before or after the first gift has been made. But you cannot go back more than four years (six years, until April 2010);
- effective systems and record keeping remain crucial;
- understanding of HMRC guidance which can be found on their website is important.

8.2.2 Contents of Gift Aid Declaration

What does the Declaration have to contain?

- The request that tax be recovered on donations. It is not essential to refer to the Gift Aid Scheme.
- The donor's name.
- The donor's address - preferably with the postcode. Change of address will not invalidate the Declaration, but you should keep a record of any updated address.
- The church/charity name - either in full or a shortened version by which it can easily be identified.
- A description of the donations, e.g. all donations to the church made by the donor in the last 4 (6, until April 2010) years (recommended).

- A note explaining the need for the donor to have paid enough tax for a particular tax year. He or she must pay an amount of UK income tax (at whatever rate) or capital gains tax at least equal to the total tax reclaimed on the giving.
- The date of the declaration.
- There is no official requirement that it be signed.

8.2.3 Cancelling declarations

- A donor can cancel a Declaration at any time and by any means of communication.
- Keep a record of the date of cancellation.
- The cancellation takes effect from the date you are notified or such later date as the donor specifies.
- You can reclaim tax on donations received before the effective cancellation date, but not after.

8.2.4 Who can give through Gift Aid?

- Any individual tax payer who is able to sign a Gift Aid Declaration.
- Partnerships and companies can also make Gift Aid donations, although there are different arrangements for (incorporated) companies. The charity should not reclaim any tax on incorporated company gifts (see Paragraph 8.2.14).

8.2.5 What kind of tax payer?

- Relevant tax is UK income or capital gains tax.
- It does not matter at what rate income tax is paid.
- It is sufficient that a donor pays enough tax in total, whether income tax at the basic rate or any other rate, or capital gains tax, to cover the amount of tax reclaimed on their giving.
- If a donor gives to a number of different charities and has signed a number of Declarations, they must total the whole of their giving in a tax year to check that they have paid sufficient tax.

8.2.6 Higher rate tax payers

- Higher rate tax payers get additional relief on the difference between the basic rate (22% until April 2008 and 20% thereafter) and the higher, 40% rate.
- The additional relief is claimed through the donor's own tax return.

8.2.7 Gift Aid requires a cash payment

- Gifts of goods or services cannot be Gift Aid payments.
- Waiving a loan does not count. Instead, repay the loan and ask the donor to make a separate gift back.
- A gift of qualifying shares can be made with considerable tax benefits, though not through Gift Aid

8.2.8 Residency requirements

Generally speaking, donors will be UK residents. However, a donor can be resident overseas and make gift aid payments, provided that they pay sufficient UK income or capital gains tax to cover any tax reclaimed by the charity.

8.2.9 Benefits in return

A donor may receive some small benefits in return for a gift provided these do not exceed the amounts in the following table:

| Amount of gift | Value of benefits |
|----------------|-------------------|
| £0-100 | 25% of the gift |
| £100-1,000 | £25 |
| £1,001+ | 5% of the gift |

There is an overall value of benefits limit of £500 for all gifts by a donor to a single charity in one year. There are also complex rules relating to "annualising" benefits, further details of which can be found in HMRC own guidance.

8.2.10 What about long term commitment?

There were advantages to the (now old) deed of covenant arrangements for obtaining tax relief: namely, the expression of commitment and the aid to budget setting.

There is still a place for an expression of commitment from church members, albeit this is not necessary for tax relief purposes. Consider using an annual pledge form. There is no legal significance, but it serves the useful purpose of allowing church members to review and express their financial commitment to God and to the church and aid treasurers and administrators in terms of budgeting.

8.2.11 Handling cash offerings

Gift aid presents a major opportunity for churches to reclaim tax on irregular or occasional cash offerings. However, there must be an 'audit trail' to provide the necessary link between the donor and the amounts given. This is likely to require an envelope system.

Some points on using envelopes:

- records, records, records! Amounts must be linked to the donor in the donation records;
- keep a sample of envelopes, normally for one month of each year (which in turn have to be kept for at least 6 years);
- if you use envelopes containing a Gift Aid Declaration on which you rely, you need to keep them for as long as you still rely on that declaration.

8.2.12 Record keeping

It is crucially important to keep adequate records. Countless churches/charities fall down on this. Setting up an adequate system is a start point. It is also

essential to maintain that system over the longer term, especially if there is a change of key personnel, such as the church treasurer or book-keeper.

Churches may wish to consider outsourcing to a specialist agency like Stewardship, especially if there are doubts over the long term ability to maintain proper gift aid administration and record keeping.

8.2.13 Satisfying HMRC

Poor record keeping may only come to light a number of years later, when the inevitable HMRC audit visit takes place!

You need to keep sufficient records to show that your tax reclaims are accurate. The key elements are an audit trail linking each donation to an identifiable donor who has given the charity a valid Gift Aid Declaration.

8.2.14 Gifts from companies

Company donations to charity will always be gross - no tax can be claimed back on gifts.

This means that if you receive support from a company you should make sure that they understand the need to add on the tax relief to the gift and to claim the tax relief through their company tax return.

8.2.15 Gift Aid & telephone donations

The Declaration can be given orally, to cover donations made over the telephone with a credit or debit card. The essential elements of a Gift Aid Declaration (see previously) must be covered in the telephone conversation.

Written confirmation must be provided to the donor including an explanation of the donor's entitlement to cancel the Declaration within 30 days of receiving the written confirmation. No tax reclaim should be made until written confirmation has been sent to the donor. If tax is reclaimed within the cancellation period, and the donor does cancel within the period, tax will have to be refunded to HMRC.

8.2.16 Gift Aid & Internet donations

If you will be obtaining donations via a web site you will need to:

- include the minimum required content for a Gift Aid Declaration on the page from which the donation is activated, and
- ensure that a record of the declaration is kept, in either printed or a prescribed electronic form.

8.2.17 Frequency of tax claims

It is entirely up to the church/charity to decide when to claim and on how much. Make sure you have a Declaration and payment records in respect of every item in a claim.

8.3 Gifts of shares & other securities

There are now very attractive tax savings for individuals and companies who donate qualifying shares or securities to a church or charity. In broad terms, an individual can deduct the market value of the shares (plus any costs of disposing of them) from their income at their top rate of tax and avoid any capital gains tax on the shares.

8.4 Payroll giving

8.4.1 This scheme has been with us for a number of years, but the take-up rate has been very low. This is partly because an employer has to take the initiative to set-up a scheme.

8.4.2 Some important points to note about the operation of payroll giving:

- the tax relief is given to the donor not to the church. This means that the individual has to 'gross-up' his or her gift if the church is to get the same benefit. Grossing-up means adding back the basic rate tax which the donor has saved. With a basic rate of 20%, to gross-up, the individual must add 25% to their net gift;
- 'grossing up' is no easy concept to communicate to donors! There is a real danger of churches receiving less overall because they are no longer in control of the extra tax benefit;
- a cash flow problem can arise. First, the deduction has to be made by the employer from the salary which is then sent on to the payroll giving agency. The agency then has to pass the employee gifts on to the church or charity which does not always happen quickly! In some existing schemes, this can take many weeks. (However, note Stewardship's own payroll giving agency passes on funds at the earliest opportunity!).

8.5 Looking after your donors

Make sure donors know that they need to pay, and to continue to pay, sufficient tax.

Consider an annual communication to:

- check that they are still paying enough tax;
- provide them with a personal figure of total Gift Aid and tax reclaimed for the tax year - particularly useful for higher rate taxpayers or for those claiming Tax Credits. Note: payment of Gift Aid donations reduces assessable income for Child and Working Tax Credit purposes, thereby increasing the amount of support paid out in tax credits!
- remind couples, where one may have ceased to be a tax payer, that the declaration and payments must come from the other;
- if a donor gives to a number of different charities and has signed a number of Declarations, they must total the whole of their giving in a tax year to check that they have paid sufficient tax.

9 Tax position of churches/charities

9.1 Introduction

9.1.1 These notes are an introduction. More detailed publications are available from Stewardship – www.stewardship.org.uk.

9.1.2 Although charities including churches tend not to pay any tax, it is incorrect to assume that there is a general exemption. The following paragraphs, therefore, examine those areas where liability may arise and where specific exemptions exist.

9.2 Income and Corporation taxes

9.2.1 Trading

Trading income of a charity is liable to tax, unless the trade is exercised in the course of carrying out the primary purpose of the charity and the income is applied for charitable purposes only. The primary purposes will be set out in its governing document (Trust Deed, Memorandum and Articles of Association, or similar) and are usually described as the "Objects" of the charity.

HMRC will permit trades which are ancillary to the main purposes and this will include a church bookstall which sells Bibles, Christian books and stationery. If the trade is partly primary purpose and partly not (for example, a bookstall selling general interest books in addition to Bibles, etc.), the results of each will need to be split. The non-primary purpose income may be taxable.

Reference should be made to the earlier section on the permitted levels of fundraising trading.

HMRC, by concession, will allow small fundraising activities to escape tax. Events such as coffee mornings and infrequent social events to raise funds for the church would come under this heading. A number of conditions need to be complied with. Normally, if the event occurs more than 15 times a year in the same locality, it would fall outside of the concession. The activities should be supported substantially because supporters are aware that any profits will be devoted to the church.

The sale of donated goods, provided that they are not subjected to significant processing prior to sale, will not be taxable.

9.2.2 Rental Income

Rental income is generally exempt from tax if applied for charitable purposes only. If significant services other than the use of the building are also provided by the church, the income could fall within the rules for trading income rather than rental income.

9.2.3 Donations

Donations under Gift Aid or otherwise are generally exempt from tax. The details on Gift Aid and other forms of charitable donations are covered in the previous section.

9.2.4 Property sales

Property sales, where the property has been used by the church or is a long term investment of the church, are normally exempt from tax as long as the sale proceeds are applied for charitable purposes. However, certain sales of property are considered by HMRC to be 'trading in property' and are **not** exempt, which can cost the church/charity a great deal. This tends to happen if actions are taken by the church/charity suggesting they are looking for a short term gain. If in doubt, it is strongly recommended professional advice is obtained.

9.3 Value Added Tax

There are no blanket exemptions from VAT for churches/charities.

Churches occasionally ask whether voluntary registration for VAT purposes should be considered. In most cases, this will be inadvisable and in some cases may not be permissible in any event.

The VAT registration threshold is revised each year. From 1 May 2009, it is £68,000 per annum. Exceptionally, the VATable income of a church exceeds this limit, the church is required to register for VAT purposes. This is unusual, as donations (including Gift Aid, etc.) are not VATable. Where VAT registration is necessary, professional advice is often advisable. Since most churches will not or cannot register, the VAT that they incur on purchases will not be recoverable. VAT planning is, therefore, limited to minimising the amount charged to the church. Some areas to consider are:

a) Advertising

Where a charity places an advertisement on third party media, the main purpose of which is to promote the objects of the charity, to raise funds or to raise volunteer support, VAT should not be charged provided the advert states that "x church exists to ..." (i.e. explaining the main objects of the charity). Advertising on the charity's own website is not third party, even if hosted by another person, and does not qualify. Direct mail shots are also non-qualifying.

b) Electricity and gas, etc.

This should be charged at 5%, not the standard rate. Ensure that the charity is benefiting from the lower rate. Contact suppliers where appropriate. Consider asking for a refund of any VAT overpaid in the past.

c) Building work

Some reliefs are available for certain building extensions, new buildings, certain builder's fixtures and provisions for the disabled. The rules are complex and professional advice is strongly advised where any major expenditure is contemplated.

d) Energy saving materials

In appropriate cases, voluntary Christian workers or clergy without stipend or on low stipend may be able to take advantage of a specific relief. VAT is reduced from 17.5% to 5% from 1 July 1998 in respect of "Energy saving materials" supplied to persons receiving certain specific benefits, such as Family Credit, Council Tax Benefit and Income Support, or who are pensioners. A condition of the relief is that the work is grant-funded by the Home Energy Efficiency Scheme, the Domestic Energy Efficiency Scheme or a similar Local Authority Scheme.

9.4 Business rates

Places of public worship are generally exempt from business rates. Other premises held by the charity and used wholly or mainly for charitable purposes (and not for residential purposes), are subject to a mandatory relief of 80%. The Local Authority has discretionary power to increase this relief to 100%.

9.5 Other taxes

Churches/charities are also exempt:

- Stamp Duty
- Inheritance Tax
- Capital Gains Tax

Appendix A – Information on Charity Commission Offices and HMRC Charities

- **London**

30 Millbank, London SW1P 4DU

General telephone number for all three offices: 0845 3000 218 (0845 3000 219 for hearing and speech impaired callers); Fax: 0151 7031 555

- **Liverpool**

12 Princes Dock, Princes Parade, Liverpool, L3 1DE

- **Taunton**

Woodfield House, Tangier, Taunton, Somerset TA1 4BL

- **Newport**

8th Floor, Clarence House, Clarence Parade, Newport, NP19 7AA

- **Publications**

Most of these are available from the Commission's website: www.charitycommission.gov.uk

Information on HM Revenue & Customs Charities

HMRC Charities, St Johns House, Merton Road, Liverpool L75 1BB

Tel: 0845 302 0203

Appendix B - Sample Minutes

MINUTES OF A MEETING OF [name of trust/charity]

Held on the [date] at [location] at [time]

Present: [names of all trustees present]

In attendance: [names of other persons present]

1 [First item/resolution. Record all decisions concisely but with all pertinent information]

2 etc

Signed by the Chairman of the meeting [Name]

Signature _____ Date _____

Appendix C - Holding Effective Trustees Meetings

1 General points

- Meetings provide an environment for informed decision making, clarification of responsibilities and monitoring the implementation of decisions; they need to be effective.
- Consult your governing document for any specific requirements and follow them. If unsuitable, consider amending to vary them.
- Have a copy of the governing document available at all meetings for reference purposes.

2 Calling meetings

- Consider using standard form notice and an agenda.
- Take account of any time limits that have to be observed (e.g. minimum notice). Have a checklist of these.
- Secretary or person fulfilling that role to be particularly aware of these things.

3 The Agenda & Documentation

- Meetings benefit from an agenda which lists the items of business to be discussed at that particular meeting.
- Settle agenda in advance usually between chairman and secretary.
- It is good practice nowadays to have a standing item at the beginning of the agenda to call for any trustee conflicts of interest and the agenda items involved. Any conflicted trustees should then absent themselves from the discussion and decisions on those items.
- It may be useful to indicate on the agenda how much time is expected to be allowed for each item.
- Consider stating the target finish time for the meeting.
- It is helpful to indicate whether an item of business is for discussion or whether a decision needs to be taken.
- To help manage the documentation, consider different colour paper for different reports, etc.

4 Quorum

- The governing document should specify the quorum requirements. Follow these.
- If it does not, then it would be wise for the trustees to fix it and record it in any rules or standing orders established for the conduct of meetings.
- Factors on settling the level of the quorum: if it is too high, any absences may make it difficult to have a valid meeting; if it is too low, a minority may be able to impose its views unreasonably.
- Quorum throughout the meeting? Probably best to have a rule that the quorum is maintained throughout the meeting, so as to ensure that each item of business is considered by an adequately representative group of people.

5 Chairing the meeting

- The Chair has the challenging task of keeping the meeting on course, on time, and still allow adequate discussion of the items. Make sure you pray for him/her!
- Try not to get too engaged in any one item personally - important to maintain objectivity and keep an eye on the overall management of the meeting.
- Do not permit any one person to dominate the meeting.
- If the meeting needs to come to a decision, the Chair should make sure that all the trustees understand what the decision means.

6 Voting

- Check the governing document for any particular requirements (note: different majorities may apply to different decisions).
- If the governing document does not give details about the number of votes required to pass resolutions at trustees' meetings, the legal position is that decisions are made by a simple majority of those voting, providing there is a quorum present.

7 Minutes/Record keeping

- The taking and keeping of minutes of some types of meeting can be required by either company law or the governing document of the charity.
- Check whether any requirements about minute taking apply to your trust/charity.
- Whatever may be the legal requirements, it is good practice that accurate minutes are kept of all meetings. The minutes do not need to be a word for word record, but need to record information that is important to the charity, especially the decisions taken and actions required as a result, together with any key discussion relevant to reaching the decision.

Recommended content:

- the name of the charity;
- the type of meeting;
- the date and time the meeting was held;
- apologies for absence;
- declaration of any trustee conflicts of interest;
- the names of those present, including in what capacity they attended e.g. trustee, adviser, etc;
- the name of the Chair;
- an accurate, but succinct account of decisions with a note of any pertinent discussion points, information the decision was based on, etc.;
- in the case of each decision: a note of any action required and the names of those responsible for implementation;
- the date, time and venue of the next meeting.

- Minutes are best drafted as soon as possible after the meeting and circulated promptly. This avoids imperfect memories and delays in implementing decisions.
- As the minutes are the charity's record of decisions, it is important that they are accurate and stored properly. They may need to be used to support decisions approved at meetings.
- The minutes of meetings need to be kept during the existence of the charity.

8 Alternative forms of "meetings"

8.1 Virtual or electronic meetings

- Unless the governing document specifically prohibits it, charity trustees may choose to conduct some meetings by electronic means
- The electronic means must allow the trustees to both see and hear each other, for example, by using video conferencing or internet video facilities.
- Such virtual meetings should not be a total alternative to a physical meeting - face to face human contact at least once a year is recommended!

8.2 Telephone conferencing

- This may be used for discussions, etc. or in those cases where the governing document does not require a meeting.
- This form of communication does not constitute a valid meeting in the legal sense, and so is not suitable where the business concerned has to be transacted at a "meeting".

9 Further Information:

- Charity Commission website: www.charitycommission.gov.uk, especially the publications section
- Institute of Chartered Secretaries and Administrators website: www.icsa.org.uk/icsa/
- Details about the organisation and running of companies can be found on the Companies House Internet site www.companies house.gov.uk
- Land Registry website www.landregistry.gov.uk

Appendix D - Practical Suggestions for Keeping on the Straight And Narrow

- 1 Periodically check through the provisions of the trust document. Consider a contents sheet as a guide (although beware of summaries which may distort the original meaning).
- 2 Any amendments should be kept with the original document and copies attached to the copy kept by each trustee.
- 3 Make sure appointments and retirements of trustees are properly recorded and kept with the trust deeds, etc.
- 4 Make sure any important decisions on financial matters are recorded in written minutes.
- 5 Provide adequate supervision and support for your treasurer.
- 6 Have regular management accounts (ideally monthly) showing income and expenditure against budget.
- 7 Make sure you have adequate insurance cover - including all relevant types of insurance and at the appropriate levels of cover (e.g. full reinstatement value for buildings adjusted over time to reflect full rebuilding cost). Employers' liability insurance is a legal requirement if employing anyone. Liability can also attach to volunteers. Check with your insurance adviser. Public liability cover should also be considered.

8 **Knowing when to get professional advice**

Circumstances where professional advice is likely to be required include:

- land transactions. The sale or mortgage of church property requires professional advice (Sections 36-38 Charities Act 1993);
- formal documentation to record changes of trustees if the Trust owns land or buildings;
- preparing accounts and having them examined where annual income is over £250,000. The independent examiner is legally required to be professionally qualified. When income is over £500,000 or when gross assets exceed £3.26 million, a professional audit needs to be carried out;
- if managing a portfolio of shares or other investments. Bear in mind the requirements of the Trustee Act 2000 (Stewardship Briefing Paper on the Act gives further details).

9 **Ensure that funds are being handled efficiently and effectively**

This includes getting the best return on deposits without taking undue risk.

Make sure all tax reliefs are being obtained.

No deduction of tax on deposit interest.

No VAT on publicity materials, advertising and some building works. For a fuller treatment refer to "VAT for Churches – a guide to the issues" from the Stewardship online shop.

No stamp duty on land transactions.

No capital gains tax.

No inheritance tax.

Business rate relief on premises. 100% relief on places of worship and at least 80% relief on other premises.

Make sure gifts through Gift Aid are administered properly and in line with the HMRC requirements.

Appendix E - Example Simplified Trustees Report

(Income/Expenditure below £250,000 p.a. where 'receipts and payment' accounts are prepared)

ANYTOWN CHURCH ANNUAL REPORT AND ACCOUNTS for the year to 30 April 2009

Legal and Administrative Information

Trustees: Ivor Newbegin
Evan Gellist
Mrs.Fi.Nantz (Treasurer)
Justin Thyme (Appointed 29 April 2009)

Registered Charity No. 2899999

Principal address Anytown Evangelical Church
38-40 Central Street
Anytown
AT12 2ZZ

Governing Document Deed of Trust dated 30 December 1991

Independent Examiner S Mathews
Stewardship
PO Box 99
Loughton
Essex IG10 3TZ

Bankers Nat East
Black Horse Lane
Barclay Square
West Midlands
WM13 3PP

ANYTOWN CHURCH
ANNUAL REPORT AND ACCOUNTS
for the year to 30 April 2009

The Trustees of Anytown Church have pleasure in presenting their Annual Report for the year to 30 April 2009.

Trustees

Appointment of trustees is governed by the Trust Deed. Existing trustees are authorised to appoint new trustees.

Aims and organisation

The Trust is established to advance the Christian religion in accordance with the Evangelical Alliance Statement of Faith.

The Church operates primarily, but not exclusively, in the Borough of Anytown and employs one full time pastor and one administrator. These staff are supported by the Trustees (in their capacity as church elders) and a team of Deacons who are annually elected by decision of the Church Members Meeting.

Review of activities and achievements

During the year, the Church has held regular weekly meetings for worship, prayer, teaching and evangelism which have been open to all. In addition, 3 Alpha courses were run and a very successful "Weekend Away" was held which resulted in 10 young people committing their lives to Jesus Christ.

The Church has also been committed to the support of Christian work among the poor and in other aspects both in the UK and across the world; particularly through the support of ,and.....

In considering the activities the Trustees have had regard to the guidance issued by the Charity Commission on public benefit in December 2008.

Review of financial activities and affairs

The Church is financially dependent on the voluntary support of its members. In the year, they continued to generously give to the aims of the church. Total voluntary income receipts (including legacies) for the year amounted to £44,500 and expenditure totalled £50,000 with just under £5,000 of reserves being drawn down.

Payments to or on behalf of trustees

During the year, 3 trustees were reimbursed expenses incurred on behalf of the Church totalling £850.

Approval

This report was approved by the Trustees on 28th July 2009 and signed on their behalf.

IVOR NEWBEGIN

Trustee