

# Public Document Pack



## **Agenda for a meeting of the Regulatory and Appeals Committee (sitting as Trustees) to be held on Thursday, 6 February 2020 at 1300, or on the rising of the earlier meeting of the Committee whichever is the later, in the Banqueting Hall - City Hall, Bradford**

### **Members of the Committee – Councillors**

<b>LABOUR</b>	<b>CONSERVATIVE</b>	<b>LIBERAL DEMOCRAT AND INDEPENDENT GROUP</b>
<b>Warburton Wainwright Amran Watson</b>	<b>Ali Brown</b>	<b>Reid</b>

### **Alternates:**

<b>LABOUR</b>	<b>CONSERVATIVE</b>	<b>LIBERAL DEMOCRAT AND INDEPENDENT GROUP</b>
<b>Azam Godwin S Hussain Lal</b>	<b>Ellis Pollard</b>	<b>R Ahmed</b>

### **Notes:**

- This agenda can be made available in Braille, large print or tape format on request by contacting the Agenda contact shown below.
- The taking of photographs, filming and sound recording of the meeting is allowed except if Councillors vote to exclude the public to discuss confidential matters covered by Schedule 12A of the Local Government Act 1972. Recording activity should be respectful to the conduct of the meeting and behaviour that disrupts the meeting (such as oral commentary) will not be permitted. Anyone attending the meeting who wishes to record or film the meeting's proceedings is advised to liaise with the Agenda Contact who will provide guidance and ensure that any necessary arrangements are in place. Those present who are invited to make spoken contributions to the meeting should be aware that they may be filmed or sound recorded.
- If any further information is required about any item on this agenda, please contact the officer named at the foot of that agenda item.
- Applicants, objectors, Ward Councillors and other interested persons are advised that the Committee may visit any of the sites that appear on this Agenda during the day of the meeting, without prior notification. The Committee will then reconvene in the meeting room after any visits in order to determine the matters concerned.
- At the discretion of the Chair, representatives of both the applicant(s) and objector(s) may be allowed to speak on a particular application for a maximum of five minutes in total.

### **From:**

Parveen Akhtar  
City Solicitor  
Agenda Contact: Yusuf Patel  
Phone: 01274 434579  
E-Mail: [yusuf.patel@bradford.gov.uk](mailto:yusuf.patel@bradford.gov.uk)

### **To:**

## **A. PROCEDURAL ITEMS**

### **1. ALTERNATE MEMBERS (Standing Order 34)**

The City Solicitor will report the names of alternate Members who are attending the meeting in place of appointed Members.

### **2. DISCLOSURES OF INTEREST**

(Members Code of Conduct - Part 4A of the Constitution)

To receive disclosures of interests from Members and co-opted members on matters to be considered at the meeting. The disclosure must include the nature of the interest.

An interest must also be disclosed in the meeting when it becomes apparent to the Member during the meeting.

*Notes:*

- (1) Members may remain in the meeting and take part fully in discussion and voting unless the interest is a disclosable pecuniary interest or an interest which the Member feels would call into question their compliance with the wider principles set out in the Code of Conduct. Disclosable pecuniary interests relate to the Member concerned or their spouse/partner.*
- (2) Members in arrears of Council Tax by more than two months must not vote in decisions on, or which might affect, budget calculations, and must disclose at the meeting that this restriction applies to them. A failure to comply with these requirements is a criminal offence under section 106 of the Local Government Finance Act 1992.*
- (3) Members are also welcome to disclose interests which are not disclosable pecuniary interests but which they consider should be made in the interest of clarity.*
- (4) Officers must disclose interests in accordance with Council Standing Order 44.*

### **3. INSPECTION OF REPORTS AND BACKGROUND PAPERS**

(Access to Information Procedure Rules – Part 3B of the Constitution)

Reports and background papers for agenda items may be inspected by contacting the person shown after each agenda item. Certain reports and background papers may be restricted.

Any request to remove the restriction on a report or background paper should be made to the relevant Strategic or Assistant Director whose name is shown on the front page of the report.

If that request is refused, there is a right of appeal to this meeting.

Please contact the officer shown below in advance of the meeting if you wish to appeal.

(Yusuf Patel - 01274 434579)

## **B. BUSINESS ITEMS**

### **4. THE FORMER BINGLEY SCIENCE, ARTS & TECHNICAL SCHOOL TRUST (" THE FORMER SCHOOL") 1889 AND 1896 TRUST SETTLEMENT** 1 - 138

In May 2019 the Council as corporate trustees (the trustees) made three awards for educational purposes and agreed the remainder of the proceeds of sale of the former school should be held in a trust interest bearing bank account in the name of the Council as Corporate Trustees.

The City Solicitor will submit a report (**Document "AD"**) which invites the Trustees to review the current position and consider the options and recommendations relating to the following:-

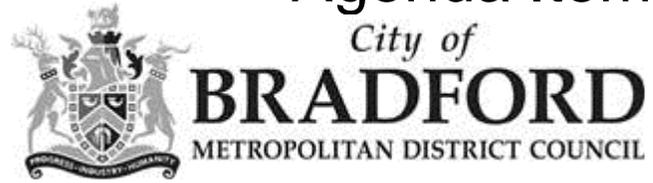
- (i) Future investment of the trust fund to safeguard its capital value (currently stands at £223,000) and provide an income for future awards for educational purposes.
- (ii) A constitution and name of the trust fund and its registration with the Charity Commissioners.

#### **Recommended –**

- (1) To pursue Options 2, 3 and 6 seeking the appropriate internal and external legal and financial advice where required and in the meantime continue with option 1 as set out in Document "AD".**
- (2) To seek assistance from the Charity Commissioners relating to the registration of the trust as a charity, its future constitution and its geographical area.**
- (3) The City Solicitor to write to schools and other educational organisations in the BIAD to explain the existence of the trust funds and the option to seek awards in 2021 when the investments of the fund have been settled.**
- (4) The City Solicitor generally to publicise the existence of the Trust Fund and seek additional donations from the residents and businesses of the Bingley area.**
- (5) To note the concerns and suggestions of the Bingley Town Council and the Bingley Grammar school but to keep the current arrangements for the administration of the trust fund and awards with the Council for the present time.**

(Richard Winter - 01274 434292)

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## **Report of the City Solicitor to the meeting of the Regulatory & Appeals Committee (sitting as Trustees) to be held on 6<sup>th</sup> February 2020**

**AD**

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**Subject: THE FORMER BINGLEY SCIENCE, ARTS & TECHNICAL SCHOOL TRUST ("THE FORMER SCHOOL") 1889 AND 1896 TRUST SETTLEMENT.**

### **Summary**

**In May 2019 the Council as corporate trustees (the trustees) made three awards for educational purposes and agreed the remainder of the proceeds of sale of the former school should be held in a trust interest bearing bank account in the name of the Council as Corporate Trustees.**

**The Trustees are invited to review the current position and consider the options and recommendations relating to the following:-**

- (i) Future investment of the trust fund to safeguard its capital value (currently stands at £223,000) and provide an income for future awards for educational purposes.**
- (ii) A constitution and name of the trust fund and its registration with the Charity Commissioners.**

Parveen Akhtar  
City Solicitor  
Report Contact: Richard Winter  
Acting as Solicitor for the Council as Corporate Trustees  
Deputy Team Leader Property Commercial  
And Development Law Team  
E-mail: richard.winter@bradford.gov.uk

## **1. SUMMARY**

1.1 In May 2019 the Council as corporate trustees (the trustees) made three awards for educational purposes and agreed the remainder of the proceeds of sale of the former school should be held in a trust interest bearing bank account in the name of the Council as corporate trustees.

1.2 The Trustees are invited to review the current position and consider the options and recommendations relating to the following:-

- (i) Future investment of the trust fund to safeguard its capital value (currently stands at £223,000) and provide an income for future awards for educational purposes.
- (ii) A constitution, the name of the trust fund and its registration with the Charity Commissioners.

## **2. BACKGROUND**

2.1 The former school (demolished March 2019) was built in 1889 under arrangements of the then trustees of the Bingley Science Arts and Technical school) (the trustees being insert names.....) and in furtherance of the Technical Instruction Act 1889 and in support of the Bingley Improvement Commissioners area known as the Bingley Improvement Area District (BIAD) as established by the Bingley Improvement Acts of 1847 etc. . Additional school land was added in 1896.

2.2 The objectives of the Trust are set out in a conveyance dated the 23<sup>rd</sup> October 1889 between Alfred Sharp Esquire and the trustees of the will of James Sharp Esquire who conveyed the land to the " Trustees of 'the Bingley Science Arts and Technical School' ( later referred to as "the former school" ). The conveyance sets out various educational objectives of the trust which benefit both children and adults of the former BIAD. The trust deeds are attached as Appendix 1 (see Para 11.1 below).

2.3 The minutes and resolutions of the Trustees from the meeting in May 2019 are attached as Appendix 2 (see Para 11.2 below).

2.4 The Charitable Trust is not currently required to be registered with the Charity Commissioners (the Commissioners) as it has an annual income of less than £5000.00. However consideration needs to be given by the trustees to the voluntary registration and future investment of the capital funds (£223,000) to protect its value against inflation (see current income at Para 11.5 below) and in order to produce an income from which future educational awards can be made.

## **3. OTHER CONSIDERATIONS –**

3.1 Awards from the ' trust fund' must be to further the purposes of the educational trust created in 1889 for the benefit of adults and children of the BIAD.

- 3.2 The trustees are asked to consider the adoption of a formal constitution and name for the trust fund going forward.( see draft constitutions at Para 11.3 and 11.4 below)
- 3.3 The trustees are also asked to consider future financial investments of the trust fund either in share market investments funds or a domestic or commercial property to let (see options below and the Charity Commissions advice attached at Para 11.5).
- 3.4 In November 2019 the City Solicitor approached the Head of the West Yorkshire Pension Fund (WYPF) to establish whether or not the financial advisors employed by the WYPF could provide pro bono investment advice to the Council as trustees. This is not possible as the WYPF's financial advisors are insured to advise only the WYPF itself.
- 3.5 However the Head of the WYPF commented that the trustees should consider the appointment of an investment manager from a reputable Financial advisor e.g. CCLA (see background details at Appendix 11.7) which has an excellent steady record over many years. CCLA offer a range of funds and one of a combination should meet the investment objectives of the trustees. The trustees may consider an investment fund with a yield of about 3% or a property fund which has a yield of over 5% both with market related capital value returns.
- 3.6 It is inadvisable to continue to invest in the longer term with the NatWest bank given its saving account interest is 0.7% i.e. less than inflation and the total income to between November 2018 (when the former school was sold) and the 31<sup>st</sup> December 2019 is £1582.00. Given that small income it is recommended that no awards be made in 2020 in order to safeguard the existing capital fund until it has been invested for a period of at least one year.
- 3.7 It should be noted that following the meeting in May 2019 the Bingley Town Council raised concerns (attached as an email appendix at Para 11.8) which in summary requests a clarification of the future use of the trust funds and its investment amongst other matters. The responses to those matters raised are set out in the remainder of paragraph 3 below.
- 3.8 Also in December 2018 the Bingley Grammar school wrote to the Council as trustees making suggestions as to the use of the trust fund and seeking an award. The application for an award was withdrawn given that educational awards are currently limited to the Bingley IAD and Bingley Grammar school is not in that area ( see letter at appendix).
- 3.9 The proposed name of the charitable trust is the "1889 Bingley Educational Trust Fund".
- 3.10 It is proposed to register the trust with the Charity Commissioners.
- 3.11 The criteria for making awards are to further the educational purposes of the original trust i.e. to support adults and children amongst other ways through existing educational establishments and organisations within the former BIAD area.

- 3.12 . A plan and list of existing formal educational establishments in the former BIAD is attached as an appendix at Para 11.9 below.
- 3.13 It is proposed that future annual awards will be made from net income from the fund (keeping the capital intact) taking into account inflation and will be divided between those successful applicants.
- 3.14 Applications for awards will be considered at the May or June meeting of the Regulatory and Appeals Committee sitting as trustees following a report of the trust funds income in April or May each year.
- 3.15 It is proposed the trustees investment strategy is in broad terms as set out above but subject to advice from Investments managers (who have yet to be appointed).and the Councils Estates and Property Service (re possible rental property investments in the Bingley area).
- 3.16 It is still an option to dissipate the whole of the capital by making large capital awards to those educational establishments in the BIAD although such a proposal was rejected in May 2019.
- 3.17 The trustees are also asked to consider the application from Friends of Bingley school to amend the status of the award (to be used to help with the process of asset transfer of Bingley Pool) It should be noted that the process of asset transfer of the Bingley Pool does not sit comfortably with the educational purposes of the trust fund.
- 3.18 The Bingley Town Council also seek approval from the trustees to invite a number representatives from Bingley to assist in the allocation of awards and to consult Bingley Folk as to whether or not a wider boundary beyond the BIAD should be used for the allocation of awards e.g. to include in addition to the Bingley AID, Gilstead, Eldwick, Crossflatts, Micklethwaite and Cottingley or the boundaries of Bingley Parish created in 2016. The Town Council also suggest the venue of the meeting could be in Bingley when it makes awards. The Town Council also request the Council as trustees to consider the transfer of the trust fund to it for future stewardship.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1 Since the sale of the Trusts only asset i.e. the former school in November 2018 the funds have been invested as set out in the email and spreadsheet attached at Para 11.8 of the report.
- 4.2 The trustees are invited to consider which alternative types of investment they wish to seek advice upon for the future protection of the capital receipts from sale and income generation for educational awards.
- 4.3 The current savings account in which the trust fund is held has an interest rate of 0.7% below inflation and is unsuitable in the longer term to protect the capital against inflation which is currently running at approximately 2.5 %.

4.4 Given the Council also administer the Baildon Mechanic Institute Trust fund it may be possible in future to make joint financial investments which may produce a higher income to both trust funds.

## **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

5.1 The Trustees resolved in August 2017 that the Council's City Solicitor acting for the Trustees should seek advice from central government as to repayment of a grant made in the late 1800's from HM Treasury to build the school as mentioned in the trust deed.

5.2 The City Solicitor wrote to HM Treasury, the Home Office, the Department of Education and the Charity Commissioners in August, September and October 2017.

5.3 In December 2017 lawyers of the Charity Commissioners advised as follows "we have considered the matter. This is a matter for the Trustees of the Charity to decide upon ....the Trustees will have to undertake a risk based analysis. They will need to look at all the options which are available to them, and this may include withholding a reasonable proportion of the sale proceeds or purchasing indemnity insurance."

5.4 The trustees are advised at present to continue to preserve of the whole of the capital fund by appropriate low risk investment which intends to protect the existing capital but produces an income (by way of rental income or share fund dividends) which can be applied annually to future educational awards.

5.5 At present the trustees are advised there is no need to seek indemnity insurance (against the risk of HM Treasury seeking return of some or its entire grant) to protect the capital of the fund given the proposed investment strategy is to protect the capital value of the fund.

## **6. LEGAL APPRAISAL**

6.1 The Council as Corporate trustees can lawfully make use of the existing trust fund for education purposes within the former Bingley Improvement Area District (BIAD) and which will benefit the children and adults of that area.

6.2 Awards in this way will also naturally benefit some adults and children who may live outside the BIAD which is inevitable and lawful.

6.3 The City Solicitor at the time of registering the trust with the Commissioners will seek advice if the award area can be widened and the cost implications of such and a 'whole of capital' award.

6.4 The current savings account in which the trust fund is held has an interest rate of 0.7% below inflation and is unsuitable in the longer term to protect the capital against inflation which is currently running at approximately 2.5 %.

6.5 The Charity Commissioners have produced guidance which sets out options for

future financial investment and which mentions investments in shares (medium risk) and or properties to let (low risk).

- 6.6 In brief the guidance states Charities invest so that they can further their Charitable aims. They can invest in a number of ways to achieve their aims and there are specific legal duties and decisions making processes attached to each.
- 6.7 If trustees have considered the relevant issues, taken advice where appropriate and reached reasonable decisions they are unlikely to be criticised for the decisions or adopting a particular investment strategy.

## **7. OTHER IMPLICATIONS**

Financial investments can go down as well as up and could reduce the capital value of the trust fund as well as the fees payable for financial advice.

### **7.1 EQUALITY & DIVERSITY**

In applying the Trust Fund to the objectives of the original Trusts educational objectives consideration will be given to equality and diversity.

### **7.2 SUSTAINABILITY IMPLICATIONS**

There are no direct implications but the choice of future awards and investments can take into account sustainability issues.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

There are no direct impacts due to the operation of the educational trust funds but the choice of future awards and investments can take into account such impacts.

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

The disposal of the former school facilitated the site being brought back into use thereby resolving the on-going issues and dangers associated with an unoccupied building.

### **7.5 HUMAN RIGHTS ACT**

There are no Human Rights Act 1998 implications on the furthering the educational objectives of the Trust.

### **7.6 TRADE UNION**

None

### **7.7 WARD IMPLICATIONS**

Ward members will be given the opportunity to comment on the proposed use of the Trust funds as should Bingley Town Council.

**7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS  
(For reports to Area Committees only)**

Not relevant.

**7.9 IMPLICATIONS FOR CORPORATE PARENTING**

There are no implications for corporate parenting.

**7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT**

A Privacy Impact Assessment has not been undertaken nor is it required. In any event data protection and information security matters arising from the resolution arising from this report will be borne in mind.

**8. NOT FOR PUBLICATION DOCUMENTS**

The following documents are not for publication (NFP) as they contain information relating to the financial or business affairs of any particular person (Paragraph 3 of the Local Government Act 1972)

NONE

**9. OPTIONS**

9.1 The options presented to the Trustees are as set out in the table below

Number	Option	Advantages	Disadvantages
Option 1	Make no changes to the current savings account	The arrangement is low risk	The trust funds will be eroded by inflation and will reduce the ability of the trustees to promote the educational objectives of the trust fund.
Option 2	Make changes to the financial investment and seek advice from the Councils Chief Financial Officer and the AD-Estates and Property and where necessary external legal and or financial advisors specifically in low risk investment in shares fund and medium risk properties to let with the aim to protect the capital fund.	The preservation of the capital and the increase of in annual income from the trust fund and allocation of additional future awards for educational purposes.	The risk attached to some investments in shares may be unattractive as investments can rise or fall in value thus eroding the capital funds and the costs of external legal or financial advice must be made from the trust fund itself. Proposed investments both in shares funds and or rental property could lead to the reduction in the value of the overall trust fund if the wrong investments were chosen.
Option 3	To consider joint investments with the	The overall investment income	Investments may fall in value.

	Baildon Mechanics Institute Trust Fund	of both Funds may be increased.	
Option 4	To consider an award(s) which would allocate the whole of the trust fund	The trust fund requires no administration and will have no fees to pay for future financial or property lettings	Indemnity insurance relating to the disposal of the capital would be required.
Option 5	To adopt the constitution of a small charity as attached	Such a constitution is adequate only if the Trust income remains below £ 5000.p.a and there is no intention to register as a charity with the commissioners.	Given the trustees must make financial investments to protect the capital a more detailed constitution as set out at option 5 is advisable
Option 6	To adopt the draft constitution at Para 11.4 below upon registration of the trust with the Charity commissioners	Such a constitution is appropriate if the Trustees intend to make financial investments in rental property and or share funds in the endeavour to produce and income of greater than £5,000.00 per year which would take the trust fund outside the remit of a small charity	The adoption of the more complex constitution could lead to the need for additional meetings of the trustees and a greater use of the Councils legal and democratic and financial resources which are already stretched and additional external costs of financial advisors

## 10. RECOMMENDATIONS

- 10.1 To pursue Options 2, 3 and 6 seeking the appropriate internal and external legal and financial advice where required and in the meantime continue with option 1.
- 10.2 To seek assistance from the Charity Commissioners relating to the registration of the trust as a charity, its future constitution and its geographical area.
- 10.3 The City Solicitor to write to schools and other educational organisations in the BIAD to explain the existence of the trust funds and the option to seek awards in 2021 when the investments of the fund have been settled.
- 10.4 The City Solicitor generally to publicise the existence of the Trust Fund and seek additional donations from the residents and businesses of the Bingley area.
- 10.5 To note the concerns and suggestions of the Bingley Town Council and the

Bingley Grammar school but to keep the current arrangements for the administration of the trust fund and awards with the Council for the present time.

## **11. APPENDICES**

- 11.1 The 1889 and 1896 Trust deeds.
- 11.2 Minutes and resolutions of the meeting of the R&A committee May 2019
- 11.3 Draft constitution for a small charity.
- 11.4 Draft Constitution for a charity with income of more than £5K p.a.
- 11.5 Trust Funds saving account analysis December 2019
- 11.6 Commissioners Guidance Updated August 2016 'Charities and investment matters'.
- 11.7 Email from Bingley Town Council dated 31<sup>st</sup> July 2019.
- 11.8 Letter from Bingley Grammar school dated December 2018.
- 11.9 Location plan and list of educational establishments within the former BIAD.

## **12. BACKGROUND DOCUMENTS**

- 12.1 Report dated 9<sup>th</sup> March 2017.
- 12.2 Report dated 10<sup>th</sup> August 2017.
- 12.3 Report dated 5<sup>th</sup> April 2018.
- 12.4 Report dated 21<sup>st</sup> June 2018
- 12.5 Report dated 13<sup>th</sup> September 2018
- 12.6 Report dated May 2019.

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**Conveyance** Of a plot of land situate in Mornington Road Bingley

In the County of York and Declaration of Trusts

Dated 23<sup>rd</sup> October 1889

**Alfred Sharp Esq.** And the Trustees of the Will Of James Sharp deceased.

To The Trustees of the Bingley Technical School

This Indenture made the twenty third day of October thousand eight hundred and eighty nine Between Alfred Sharp of Bingley in the County of York Esquire of the first part Sarah Sharp of Heathfield Bingley in the County of York Widow the said Alfred Sharp and John Bairstow Sharp of Parkfield Bingley aforesaid Esquire of the second part Alfred Platts of Bingley aforesaid Solicitor of the third part and the said Alfred Sharp and John Bairstow Sharp James Roberts of Bingley aforesaid Colonial Wool a Merchant Robert Clough of Keighley in the said county Stuff Manufacturer David Binns England of Bingley aforesaid Manufacturer William White of Bingley aforesaid ~~Merchant Ralph Fawcett of Eldwick near Bingley aforesaid paper merchant~~ Samuel Smith stuff Manufacturer's Salesman Samuel Rushforth of Bingley aforesaid Stuff Manufacturer and Thomas Walker Goodall of Bingley aforesaid Bank Manager of the fourth part Whereas by an Indenture dated the thirtieth day of August one thousand eight hundred and seventy eight and made between Maria Sharp Widow and the said Alfred Sharp of the first part the said Alfred Sharp of the second part James Sharp of the third part Joseph Neal Thacker of the fourth part and the said Alfred Sharp and James Sharp of the fifth part the plot of land and premises hereinafter described and intended to be hereby conveyed were granted and conveyed unto the said Joseph Neal Thacker and his heirs to hold the said premises unto the said Joseph Neal Thacker and his heirs to the use of the said Alfred Sharp and James Sharp their heirs and assigns for ever in equal undivided shares as tenants in common and not as joint tenants **And** whereas the said James Sharp duly made and executed his will bearing date the twentieth day of February one thousand eight hundred and eighty six whereof he appointed his Wife Sarah and his two brothers Alfred and John Bairstow Trustees and Executors and after making specific devises and bequests not affecting the plot of land herein after described and intended to be hereby conveyed gave devised and bequeathed All his real and personal estate not thereby otherwise disposed of unto his Trustees upon trust that his said Trustees should sell call in and convert into money the same or such part thereof as should not consist of money and should stand possessed of the moneys produced by such sale calling in and conversion of his ready money upon the trusts in his said Will mentioned **And** whereas the said James Sharp duly made and executed the several codicils to his said Will bearing date the twentieth day of February one thousand eight hundred and eighty six Nineteenth day of August one thousand eight hundred and eighty seven and the twenty fourth day of December one thousand eight hundred and eighty seven respectively

none of which affected the devise of read Estate in his said Will contained **And** Whereas the said James Sharp died on the twenty eighth day of December one thousand eight hundred and eighty seven and his said Will and Codicils were on the second day of March one thousand and eight hundred and eighty eight duly proved in the District Registry at Wakefield attached to the probate Division of Her Majesty's High Court of Justice by all the Executors therein named **And** whereas in the year one thousand eight hundred and eighty seven several persons in Bingley aforesaid formed a themselves into a committee for the purpose of celebrating the Jubilee of the Reign of Her Most Gracious Majesty Queen Victoria by erecting and establishing a Science Art and Technical School in Bingley aforesaid and the parties hereto of the fourth part have been elected by such Committee as the first Trustees of the said Science Art and Technical School and have contracted and agreed with the parties hereto of the first two parts for the absolute sale to them of the plot of land hereditaments and premises described and intended to be hereby conveyed for of inheritance in fee simple in possession free from incumbrances for the sum of four hundred and fifty pounds **And** whereas the said Trustees are now erecting or causing to be erected upon the said plot of land or on some part thereof a Science Art and Technical School and also Rooms in the Basement thereof to be used as a Curators House **NOW** this Indenture **Witnessed** that in consideration of the sum of Four hundred and fifty pounds to the parties hereto of the first two parts by the said Trustees out of monies in their hands subscribed for the purposes of the said School on or before the execution of these presents (the receipt whereof the said parties hereto of the first two parts do hereby acknowledge) The said Alfred Sharp as to one undivided moiety of the hereditaments described as Beneficial owner and as to all others (if any) his share estate and interest therein and the said Sarah Sharp Alfred Sharp and John Bairstow Sharp as to the other undivided moiety of the same hereditaments as Trustees as to all other if any there or any of their share estate and interest therein so respectively hereby convey unto the said Alfred Platt to that plot of land situate in Bingley aforesaid containing by admeasurement (including moieties coextensive therewith of Mornington Road twelve yards wide Kell Street twelve yards wide and a certain new Street to be called Street also twelve yards wide) or are of one thousand five hundred square yards or thereabouts and bounded over towards the northeast by the centre line of Mornington Road aforesaid on or towards the southwest by other property of the parties hereto of the first and second part to on or towards the northwest by the centre of Kell Street aforesaid and on or towards the southeast by the centre line

of the said new Street to be called **Street Together** with all right to easements privileges and maintenances whatsoever to the said plot of land hereby granted belonging or in anywise so appertaining and particularly a right way for all purposes to and from the same plot of land or any part thereof and all or any in Buildings erecting or that may be erected thereon for the said Trustees their heirs and assigns owners and occupiers for the time being of the same premises or any part thereof and their respective workers new servants and visitors either with or without horses, cattle carts and carriages over and along all parts of the said streets or the streets there leading over with the said parties hereto of the first and second parts or their assigns have a right of way **And** also the use and enjoyment by all the same persons in common with the other persons for the time being entitled to the privileges of the sewers to be made or continued (as the case may be) along the centres of - Mornington Road – Kell Street and Street afore said and of the chain sewer or right to make which north westwardly? of the said piece of land hereby granted and to communicate with the situate south of the same plot has been reserved by George Lane Fox his heirs and assigns if and from and after the same shall be so made (saving and reserving nevertheless unto the said parties hereto of the first and second parts to their heirs and assigns all such rights of way over the said streets respectively as the said parties hereto of the first and second parts of to have already granted or as they their heirs or shall or may at any time or times hereafter grant and especially free general and unrestricted rights of way at all times hereafter to and from all the other lands and hereditaments of the said parties hereto of the first and second parts over and along such parts of the said plot of land hereby granted as have been over to be set out towards the same streets **And** also the use and enjoyment by the said parties hereto of the first and second parts their heirs and assigns (in common with the other persons for the time being entitled to a like privilege) of the said sewers for the drainage of all the other adjoining or adjacent lands of them in the said parties hereto if the first and second parts their heirs or assigns and the Buildings erected or that may be erected thereon and liberty to enter upon and open such parts of the said plot of land hereby granted as shall be necessary for the purpose of opening into or making any communication with or repairing? or cleansing such sewers respectively and of doing all or any such work accordingly **And** also the right of the said parties hereto of the first and second part to their heirs and assigns of from time to time

granting all or any such rights of way sewerage and drainage as are hereby reserved unto any persons or person whomsoever as they or any of them shall think proper? **As hold** the same unto the said Alfred and his heirs to the use of the said Trustees in fee simple Subject to all such rights of way and easements as any persons are or shall hereafter be entitled to over or in such parts of the same plot of land as to form portions of the said streets and also subject to the payment by them the said Trustees their heirs and assigns in respect of the same premises of a proper proportionate part of all land tax not exonerated of Rent in heir of titles and to the performance and observance by the said Trustees their heirs and assigns of the covenants herein entered into by them **But** nevertheless so upon and for the trusts intents and purposes expressed and declared concerning the same that is to say **Upon Trust** to permit the said principal to be used as regards the rooms coloured Blue on the plan attached to these for a school for the instruction of children and adults in the and natural sciences applicable to industry and manufacture and as regards the rooms coloured pink on the plan attached to these presents for a school for the instruction of children and adults in drawing painting modelling designing for architecture manufacturers and decoration and as regards the residue of the said principal for the purpose of imparting to such children and adults and others technical and general instruction in the various processes involved in the production of Woollen Silk and Cotton Fabrics and other manufactured and involved in the or conducting of any profession Industry which now is or for the time being may be practised or followed in Bingley aforesaid or any matters connected with the aforesaid premises professions trades or industries or any of them (which said principal edifice is hereinafter called the said Technical School) and by such other societies and persons and for such other purposes not inconsistent with the principles and objects of the said Technical School as herein before mentioned and subject to such and with and under such regulations as the of management for the time being of the said Technical School shall from time to time direct and to permit the said dwelling house to be occupied by the for the time being of the Technical School or such other person or persons as the said Committee think proper and that either subject to from as they

may from time to time see fit **Provided** always and it is hereby agreed and declared that the said principal edifice shall be open at all reasonable times to the inspection of the offices of the Department of Science and Art of the Committee of a Council on Education and that the students in the Science and Art Department of the said Technical School shall be instituted by teachers qualified to earn payments from the said Science and Art Department on the results of their teaching and holding a certificate of qualification granted by the said Department and upon trust to pay and apply the rents and profits of the said hereditaments and premises hereby granted in the first place for and towards discharging the interest of any monies which for the time being may be due and owing on account of the same trust estate and premises and all monies which may be expended in keeping the said several buildings and premises in repair and in insuring the same buildings from loss or damage by fire in the execution of the trust of these presents And upon trust to pay the surplus of such rents and profits which may remain after answering the purpose aforesaid to the Treasurer for the time being of the said Technical School for the general uses and purposes thereof Provided always and it is hereby further agreed and declared that it shall be lawful for the said Trustees for the time being at the request and by the direction of at least three fourths of the Committee of the said Technical School for the time being at a meeting specifically convened for that purpose (such request and direction to be signified by or resolution in writing to be signed by the Chairman of any such meeting) and confirmed by the vote of a majority of three fourths of the said Trustees recorded at a meeting of the said Trustees specifically called for such purpose and held not sooner than fourteen days after the meeting of the said Committee nor later than twenty eight days thereafter of which meeting each trustee shall have at least seven clear days notice in writing to sell the said premises or any part thereof either together or in and either by public auction or private contract and on any such sale to make any stipulation to title or otherwise which the said Trustees may deem proper and also to buy in any premises offered for sale or to any contract for sale and to resell without being responsible for any loss occasioned thereby for the purposes aforesaid or any of them to execute and do all such to and things as they may think fit And it is hereby further declared and agreed that the said Trustees for the time being shall stand possessed of the money which shall from time to

time be received or any sale which may be made under or by virtue of the of these presents upon trust in the first place to repay to the Lords of Her Majesty's Treasury the amount of the Grant made by them towards the costs of erecting the said Technical School and in the second place to pay all costs charges and expenses incurred in or about the execution of these presents and upon trust to invest lay out and dispose of the surplus of such money for such purposes and in such manner consistent with the principles and objects of the said Technical School as herein before mentioned as the Committee of management and the said trustees of the said Technical School assembled at any meeting convened for the purpose shall direct Provided always and it is hereby also agreed and declared that in case the said Technical School shall be dissolved or shall become extinct then the said trustees for the time being shall repay to the said Lords Her Majesty's Treasury the amount of the Grant made by them towards the cost of erecting the said Technical School and after such repayment shall continue to stand and be seized by the said trust estate and premises or otherwise shall convey and the same upon such trusts and for such purposes consistent with the principles and objects of the said Technical School as hereinbefore mentioned or for promoting the moral and intellectual improvement of the inhabitants within the limits for the time being of the Bingley Improvement Acts as the trustees for the time being of the said hereditaments and premises or the major part of them shall think proper And it is hereby declared and agreed that the person or persons who shall become the purchaser of the said trust estate and premises or any part thereof under or by virtue of all or any of the trusts of these presents or his her of trustees heirs executors or administrators shall not be obliged to see to the application of the money to be paid or advanced by his or her or them respectively as the consideration of such purchaser or purchasers be answerable or accountable for the misapplication or none application of such purchase money or any part thereof after the same shall have been paid the order of the trustee or trustees for the time being under or by virtue of these presents and that it shall not be necessary for any purchase or for any person or persons taking a conveyance of the said trust estate and premises or any part thereof by way of exchange to ascertain or show the existence of any notice which may be required

the regularity of any meeting which may be convened under or by virtue of the trusts of these presents And that every receipt which shall be given by the trustee or trustees for the time being the said trust estate and premises for any money payable to him or them by virtue of these presents shall be a good valid and sufficient acquaintance and discharge for the money therein mentioned or acknowledged to have been received and that every sale which shall be made and contract for sale which shall be entered into and conveyance which shall be executed by the said Trustees for the time being pursuant to the trusts of these presents shall be binding and conclusive on all persons claiming and benefit or interest under the trusts hereinafter declared And it is hereby declared and agreed that when and as often as a change in the trustees for the time being of the said premises or an addition to the number thereof shall at any time be deemed expedient either in consequence of the death or incapacity of any of the trustees for the time being or by reason of any of them being desirous of being discharged from or refusing to act in the trusts aforesaid or from any other cause but at all events when the numbers of acting trustees of the said trust estate and premises shall be reduced to five such continuing trustees shall nominate and appoint so many persons to be trustees of the said trust estate and premises as will make up the number of the trustees at the least and immediately upon the appointment of such new trustees the said trust estate and premises shall be duly conveyed to or otherwise vested in such new trustees jointly with the surviving or continuing trustees upon the trustees and for the ends intents and purposes and with the under and subject to the powers agreements and declarations hereinbefore limited or expressed of or concerning the same Provided always that it shall be lawful from time to time to fill up any vacancy happening in the of the said trust estate and premises before the total number of trustees shall be reduced to five and every such new trustee shall the same powers and authorities to all intents and purposes as if he had been originally appointed a trustee by those presents Provided always and it is hereby agreed and declared that all trust powers authorities and discretions reposed in or given or received and exercised by two thirds in numbers of them or of the

trustees for the time being the total number of trustees of the said trust estate and premises not being fewer than ten except in any case where any act is hereinbefore expressly required or authorised to be done at or by the request or discretion of the members of the said Technical School or a certain number of them in every which case such request or direction shall be necessary And it is hereby agreed and declared that the Committee of Management of the said School shall be (until otherwise arranged as hereinafter provided) the Committee for the time being of the Bingley Mechanics Institute elected and acting in accordance with the Rules and Bylaws of the said Institute revised in the year one thousand eight hundred and eighty three or in accordance with any amended Rules and Regulations duly passed by the members of the said Institute and in accordance with such Bylaws now in force with the addition that the trustees for the said Technical School shall be members of such Committee when pronouncing the business of the said Technical School Provided always that if at any time hereafter the said trustees shall think it expedient or shall desire that the management of the said school shall be conducted separate and apart from the Bingley Mechanics Institute the said trustees shall give six months notice in writing to the president or secretary of the said Institute of their intention to elect or separate Committee and shall also pay off or become responsible for all debts and liabilities incurred by the said Committee of the said Mechanics Institute on behalf of the said Technical School and then owing and undischarged and such separate Committee shall be elected by the Members of and to the said Technical School and act in accordance with Bylaws approved by the Science and Art Department of Her Majesty's committee of Council on Education and the said Trustees hereby covenant with the said parties hereto of the first and second part respectively their respective heirs and assigns that they the said Trustees their heirs and assigns some or one of them shall and will forthwith coextensively with the said plot of land hereby granted on the north-westerly north-easterly and south-easterly sides thereof appropriate and set apart there from towards the said street to names respectively Kell Street Mornington Road and Street as and for one moiety of each of the same streets so coextensive six feet in with (including the kerbstone) for the causeway and twelve feet in width for the horse and carriage way save that the

angles which would thus be formed by the several functions of the said causeways shall be cut to a quarter circle and the parts thus cut off shall be added to the respective carriage ways and shall and will forever hereafter keep all the same functions of streets open and unbuilt upon and shall and will within said months from the date hereof at the expense of them the said Trustees their heirs or assigns flag such portions of the said streets so to be set apart for causeways with good flags full three inches thick and eighteen inches broad at the least (except when necessary to be reduced for the junctions of the said causeways) and every alternate flag to be a thorough flag and the kerbstones to be ten inches in breadth and to be laid flatwise. And also shall and will within the same space of time have the said portions of the said street intended for carriageways (except the Channel sites) with good eight inches Nell setting stones and lay with stones of equal quality with the said setting stones and then inches wide and at the least two feet long a proper channel alongside of and coextensive with each of the said causeways hereby covenanted to be made and keep the said portions of street in good and substantial repair and condition and properly cleansed until the said streets shall respectively be so adopted to become repairable by the Bingley Improvement Commissioners and shall and will execute and do all the said works and things to the satisfaction of the said parties hereto of the first and second parties their heirs or assigns or their agent in that behalf. And also that they the said Trustees shall not nor will encroach upon any of the said Causeways by placing steps upon the same or otherwise. And also that they the said trustees their heirs and assigns shall and will bear on half part of the expense of making a common sewer along the centre of each street aforesaid so far as the same is coextensive with the said plot of land hereby granted. And also shall and will bear and pay forever afterwards one half part of the expenses of cleansing the sewers along the centres of Kell Street Mornington Road and Street and of keeping the same in good and sufficient repair and condition. And also shall and will at the time of making the said sewers respectively make provide and place the necessary side drains grates and gullies for conveying the refuse water into the said sewers respectively. **And** the said Alfred Sharp Sarah Sharp and John Baristow Sharp do hereby acknowledge the right of the said Trustees to production of the hereinbefore recited indenture of the thirtieth day of August one thousand and eight

hundred and seventy eight and to delivery of copies thereof and the said Alfred Sharp doth hereby undertake for the safe custody thereof **in witness** whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written

Signed Sealed and Delivered by the  
before named Alfred Sharp in the  
presence of  
E S Rawsder  
Cashier Bingley

Signed Sealed and Delivered by the said  
David Binns England, Alfred Platts,  
James Roberts, Samuel Smith, Samuel  
Rushforth and Thomas Walker Goodall in  
the Presence of  
M W Platts  
Clerk of Alfred Platts  
Solicitors, Bingley

Signed Sealed and Delivered by the said  
Albert Clough in the presence of  
W H Robinson  
Salesman  
Bradford

Signed Sealed and Delivered by the said  
Sarah Sharp in the presence of  
I Velpy  
Nurse  
Strafford, Bingley  
Bradford

Signed Sealed and Delivered by the said  
John Bairstow Sharp in the presence of  
J B Fix  
GP for Boro. of Dewsbury

Signed Sealed and Delivered by the said  
William White in the presence of  
M W Platts

Dated 29<sup>th</sup> September 1896

Mrs Elizabeth Sharp & Other to The Trustees of the Bingley Technical School

**Conveyance** of a plot of land situate in

Kell Street, Bingley in the County of York This Indenture made the twenty ninth day of September one thousand and eight hundred ninety six Between Elizabeth Sharp of Myrtle Grove Bingley in the county of York Widow Herbert Sharp of attachment Arthur Wilkinson of Bradford in the said county Merchant Alexander Norman Sharp of Bingley the first part the said Herbert Sharp of the second part the said Alexander Norman Sharp of the third part.

Sydney Alfred Sharp of Bingley afore said Gentleman of the fourth part Sarah Sharp of Heathfield Bingley aforesaid widow/widower John Bairstow Sharp of Bingley afore said Esquire and Percy William Sharp of Bingley aforesaid Merchant of the fifth part and the said John Bairstow Sharp James Roberts Baildon in the said county and Merchant Robert Clough of Keighley in the said county Stuff Manufacturer David Binns England of Bingley aforesaid manufacturer William Hick of Bingley aforesaid leather merchant Samuel Smith of Bradford aforesaid Stuff Manufacture Sale Manager and Thomas Walker Goodhall of Bingley aforesaid Bank Manager the Trustees for the time being of the Bingley Technical School hereafter called The said Trustees of the six part whereas by and indenture dated the 13<sup>th</sup> day of August one thousands eight hundred and seventy eight and made between Marcia Sharp and Alfred Sharp of the first part the said Alfred Sharp of the second part James Sharp of the third part Joseph Neil Thacker of the fourth part and the said Alfred Sharp and Emma Sharp of the fifth part and the said Marcia Sharp and Alfred Sharp also undivided fourth part or share of and with the plot of land and hereditments here and after described and the said Alfred Sharp as to equal undivided eight part or shares and of the same plot of land and hereditments and the said James Sharp as to the remaining equal and divided eight part or sharing of in the same plot of land and hereditments granted and conveyed into the said Joseph Neil Thacker and his heirs (inter alic) plot of land and hereditments here and after described and intended conveyed to hold the same unto the said Joseph Neil Thacker and the use of the said Alfred Sharp and James Sharp and their heirs and assigns in equal undivided shares as tenants in common subject nevertheless to the covenant in the said indenture mentioned or referred to this whereas the said James Sharp made his will bearing date the twentieth date of February one thousand and eight hundred and eighty six thereby after appointing his wife the said Sarah Sharpe and his brothers the said Alfred Sharp and John Bairstow Sharp Trustees and executors and thereof and after specifically devising his dwelling house called Heathfield gave devise and bequeath all his real property and not thereby otherwise disposed of

Unto his Trustees upon trust to sell the same and the declared that his Trustees might postpone the sale and conversion of his real estate or any part thereof for as long as they should think fit and **WHEREAS** the said James Sharp and all to codicils this said will dated respectively the nineteenth day of February one thousand and eighteen hundred and eighty six and the nineteenth day of August one thousand eight hundred and eighty seven which codicils do and affect the demise of real estate recited **AND** whereas the said James Sharp made a further codicil to his said will dated the seventy fourth day of December one thousand and eight hundred and eighty seven whereby the appointed his son the said Percy William Sharp in case and when he should attain the age of twenty one years to be a an additional trustees and executor of the said will and the codicils and hereto THIS whereas the said James Sharp died on the twenty eight day of December one thousand and eight hundred and eighty seven without having revoked or altered his said will except by his said codicils and without having revoked or allowed his said codicils and his said will and codicils were on the secondary of March duly proved in the Wakefield District Registry of the probate division of the high court of Judicial the said Sarah Sharpe, Alfred Sharpe and John Bairstow Sharp (power being reserved to make a grant of probate to the said Percy William Sharp) and whereas the said Percy William Sharp attained the age of twenty one years on the fourth day or September one thousand eight hundred and eighty nine **AND** whereas the said Alfred Sharp made his will bearing date the eight day of December one thousand eight hundred and ninety whereby after appointing his wife the said Elizabeth Sharp his son the said Herbert Sharp and Williams Fletcher Atkinson and his cashier the said Arthur Atkinson to be executors and Trustees thereof and after making specific devises and bequests and after diving his executors to set a part of his personal estate three every sums.....of twelve thousand pounds in favour of his three daughters and their children and of two thousand pounds in favour of his three sons and their children and annuity of eight hundred pounds to Testators 'wife during her life which said sums of twelve thousand pounds be charged upon his residuary real estate in case his personal estate should be insufficient he directed that his trustees should stand possessed of all his real estate and therein or otherwise disperse of upon trust for all his sons in equal share as tenants in common and he empowered his trustees with the consent of each of his son's who should have attained the age of twenty one years to sell the whole or every part

Of his real estate AND whereas the said Alfred Sharp made and executed the codicil to his said will bearing date the eight day of December one thousand eight hundred and ninety but such codicils does not affect the demise of his residuary real estate here and before recited AND whereas the said Alfred Sharp made a further codicil to his said will bearing date the twenty eight day of May one thousand eight hundred and ninety six whereby he appointed his son Alexander Norman Sharp to be an executor and trustee of his said will and bequeath to his wife further annuity of four hundred pounds and increased the sums bequeath in favour of hiss daughter AND whereas the said Alfred Sharp died on the first day of June one thousand eight hundred and ninety six without having revoked or altered his said will except by his said codicils and without having revoked or altered his said codicils and his said will and codicils were on the third day of July duly proved in the Wakefield District registry of the probate division of the high court of Justice by the said Elizabeth Sharp Herbert Sharp Arthur Atkinson and Alexander Norman Sharp the said William Fletcher Atkinson having renounced probate AND whereas by a deed poll dated the twenty fifth day of August one thousand eight hundred and ninety six under the hand and seal of the said William Fletcher Atkinson disclaimed all the real and personal estate devised or bequeathed by the said will by the said Alfred Sharp and all devises and bequests made to him by the said will and the office of Trustees or Executor of the said will AND whereas the said Alfred Sharp left three sums and no more sons surviving namely the said Herbert Sharp Alexander Norman Sharp and Sydney Alfred Sharp all of whom have attained the age of twenty one years AND whereas the personal estate of the said Alfred Sharp was sufficient to satisfy the payment of legacies and the sums of money charged hereon by the said will and codicils and no charge thereof follow upon the estate or real estate as the said parties here to of the first part hereby admit and acknowledge AND whereas the parties fixed of the first five parts of the deed with the said trustees of the absolute sale to them of the plot of land and hereditments and here and after described and the inheritance therefore in fee simple in possession free from encumbrances for the sum of 73 pounds and 10 shillings and THEN his indentures witnessed that in consideration of the sum of thirty six pounds and 15 shillings paid by the said trustees to the parties hereto of the first part on or before the execution of this present (the receipt whereof the parties hereto of the first hereby acknowledge) or the request and by the direction of the said Herbert Sharp Alexander Norman Sharpe and Sydney Alfred Sharp and in consideration

Of the sum of Thirty six pounds fifteen shillings to the parties hereof of the fifth part at the same time hereby the said trustees the receipt whereof the parties hereto of the part hereby acknowledged THE said Elizabeth Sharp Herbert Sharp of their son Alexander Norman Sharp as to one equal undivided moiety of and in the plot of land and hereditaments here and after described and as to all other (if any) their share estate and interests therein as trustees at the request and with the said consent of said Herbert Sharp Alexander Norman Sharp and Sydney Alfred Sharp hereby convey and the said Herbert Sharp as to one equal undivided third part and share of and in the same undivided moiety of and in the said hereditaments and permission amounts to all other (if any) his share estates and interest of and in the said hereditaments and premises as beneficial owner hereby convey and confirm and the said Alexander Norman Sharp as to one other equal third part or share of and in the same undivided moiety of same hereditaments and premises and all other his share estate and interest of and in the same hereditaments and premises as beneficial owner hereby convey and confirm and the said Sydney Alfred Sharp as to the remaining equal undivided third part of the same undivided moiety and in the said hereditaments and premises and as to all other (if any) his share estate and interest of and in the same hereditaments and premises as beneficial owner hereby convey and confirms the said Sarah Sharp John Bairstow Sharp and Percy William Sharp as to undivided moiety and the same hereditaments and as to all other (if any) there share estate and interests therein as trustees hereby convey to the said trustees **ALL that plot of land situate in Bingley aforesaid and containing by measurement undividing moieties Clyde Street 12 yards wide Barron Street 12 yards wide Kell Street 12 yards wide so far the same respectively herewith an area of 400 and 90 square yards as or thereabouts and bounded on or towards the North west of the centre line of Kell Street aforesaid on or towards the south west by the centre line of Clyde Street aforesaid on or outwards the North east by other property of the said trustees and on or towards the south east by the centre line of Barron Street aforesaid which said plot of land is more delineated on the plan therefore drawn on these present and thereon coloured green edged round with green boundary lines** AND also general and unrestricted rights of way and passage at all times here and after in common with the said parties hereto of the first five parts and all

Other persons entitled to similar rights to run from the said plot of land over and along so much of the width and length of the said streets as maybe necessary to afford communication with the said plot of land and over and along the residue of the said streets and over and along all streets and all roads communication therewith over which the parties hereto of the first 5 parts have power to grant rights of way if and when the same shall be appropriated and not previously AND also the like use of the common sewers made or to ne made under the said street and the right to connect (at their owner at their won fence) there private drains with each sewers making good all damage done to the streets hereby reserving nevertheless into the said parties hereto of the first 5 parts their heirs and assigns rights of way and passage at all times and for all purposes owner and along such parts of the said plot of land hereby conveyed as are to be appropriated towards the said streets and also the use of the common sewers thereunder still also reserving such rights of ways and drainage as the said parts hereto of the first 5 parts have already granted or may hereafter grant general and unrestricted rights of way at all times to and from all other land and herediments of the said parties hereto of the first 5 parts over and along such parts of the said herediments hereby conveyed as have been all shall hereafter be set out towards the said streets AND also and all the use of the said sewers for the drainage of all the other adjoining or adjacent properties of the said parties hereto of the first 5 parts and the buildings erected or to be erected thereon AND ALSO liberty and authority to enter and upon the said plot of land for the purpose of forming and constructing repairing cleaning and renewing the said streets and the footways and the sewers thereunder in the event of default being made by the said trustees and their heirs and assigns in construction repair cleaning and renewal of such streets and the footways thereto and mentioned in the covenant in that behalf here and after contained AND ALSO the right to enter upon the said streets or footway to lay carry and repair maintain renew and enlarge any sewer drain or any gas or water pipes along or under the said street or footways and for that purpose to take up the said street or footways and to block or stop up the same for such time as maybe necessary making good the surface of the same as soon as can be AND ALSO the right to every their line or direction of any street or drain or of any building line upon any portion of their unsold property for the time being AND ALSO the liability and

Authority to grant all such rights are hereby reserved into any person or persons TO HOLD the said hereditaments intended to be hereby conveyed unto and otherwise of the said trustees in fee simple upon the trust declared and contained in and by a certain indenture bearing date the 23<sup>rd</sup> date of October one thousand eight hundred and 89 made between the said Alfred Sharp of the first part the said Sarah Sharp Alfred Sharp and John Bairstow Sharp of the 2<sup>nd</sup> part Alfred Halls of their third part the said Alfred Sharp John Bairstow Sharp James Robert Clough David Binns England Williams White Samuel Smith and Samuel Richforth and the said Thomas Walker Goodhall of the fourth part being the conveyance to the trustees of the Bingley Technical School of the plot of land whereon the Bingley Technical School has been erected SUBJECT to all rights of way light draining and other easements affecting the same and especially to such rights of way and drainage as have been here before granted to any person or persons and to all outgoing of every description and also subject to the observant and performance by the said trustees their heirs and assigns of the covenants contained or referred to herein and before recited indenture of the 13<sup>th</sup> day of August one thousand eight hundred seventy eight and the part of the said Alfred Sharp and James Sharp to be observed and performed so far as the same still exists relate to or affect the plot of and hereditaments hereby conveyed and are individual in performance as part of taking affect AND the said trustees hereby covenant with the parties hereto of the first 5 parts their heirs and assigns that the said trustees heirs and assigns will at all times hereafter forever and perform the covenants contained or referred to in the here and before recited indenture of the 13<sup>th</sup> day of August one thousand eight hundred and seventy eight and on the part of the said Alfred Sharp and James Sharp to be bestowed and performed so far as the same still exists relate to or affect the plot of land and hereditaments hereby conveyed and remained to be observed and performed and will indemnify the parties hereto of the first 5 parts their heirs and assigns and the estates and the effects of the said Alfred Sharp deceased and James Sharp deceased respectively from and against all action suits claims and demands for on all accounts of the breach or none performance of the same and also with forthwith appropriate and set apart form the plot of land hereby conveyed (if not already done) and forever afterwards keep appropriated and set apart such part or parts thereof

Sufficient to form all moiety of the said streets and with the plot of land hereby conveyed and will wherever required to do by the parties hereto off the first 5 parts there surveyor or agent or their owner for the time being of the remaining moiety of the said streets or any persons entitled or required the same level form and construct to the wall faction of the parties hereto of the first 5 parts there surveyor or agent such street portion of the said plot of land and the footway or footways thereof respectively and also with construed drains and mains respectively and all necessary outlet sewers respectively are not so constructed as afore said having cleansed and renewed within one month in writing from the part hereto of the first 5 parts so to do by to the said trustees their heirs or assigns or left upon the plot of land hereby conveyed their in shall be lawful for the parties hereto of the first 5 parts their surveyor or agent to enter upon the said land and cause the works

Repairs cleansing and renewal as afore said respectively to be drawn the said Trustees their heirs or assigns will on demand pay to the parties hereto of the first 5 parts or their agent in and about the same with

Erected and forever to maintain in good repair and condition as substantial wall or fence in height from the street line or surface of the ground where the same shall be erected along the side of the plot of land hereby conveyed facing the wall street or roads and also that they will not stone or make bricks upon the said plot of land **AND ALSO** will or permit to be erected and any temporary building or erection except such and shall exclusively

5 parts hereby acknowledge the right of the said trustees their heirs and assigns to production of the deeds and documents set forthwith the schedule hereto and to delivery of copies thereof the said Herbert Sharp Alexander Norman Sharp and Sydney Alfred Sharp hereby undertake the safe custody thereof WITNESS whereof the said parties to these present and here under set their hands and seals the day and year paid and written.

#### THE SCHEULE

The schedule above referred to

19<sup>th</sup> April 1843 **Indenture** made between Gerard Thomas Northington Ferrand of the first part and Benjamin Jerry of the Second part Edward Sharp the said Alfred Sharp William Sharp and the said James Sharp of the third part.

30<sup>th</sup> August 1878 **The** hereinbefore executed indenture

Signed Sealed and Delivered

## Minutes of a meeting of the Regulatory and Appeals Committee (sitting as Trustees) held on Thursday, 30 May 2019 in the Banqueting Hall - City Hall, Bradford

Commenced 10.35 am  
Concluded 11.40 am

### Present – Councillors

LABOUR	CONSERVATIVE	LIBERAL DEMOCRAT
Warburton Wainwright Watson Godwin	Ali Brown	Reid

Observers: Councillor Geoff Winnard (Minute 7)

Apologies: Councillor Mohammed Amran

### Councillor Warburton in the Chair

#### 5. DISCLOSURES OF INTEREST

In the interests of transparency, Councillor Brown disclosed, in relation to the item concerning Bingley Science, Arts and Technical Trust School, Mornington Road, Bingley (Minute 7), that he had previously been employed as a special needs tutor in a college and was a member of the Harehill Trust.

In the interests of transparency, Councillor Wainwright disclosed, in relation to Bingley Science, Arts and Technical Trust School, Mornington Road, Bingley (Minute 7) that he was a Director and Trustee of the Bradford City Challenge Foundation.

**ACTION:** *City Solicitor*

#### 6. INSPECTION OF REPORTS AND BACKGROUND PAPERS

There were no appeals submitted by the public to review decisions to restrict documents.

#### 7. BINGLEY SCIENCE, ARTS AND TECHNICAL TRUST SCHOOL,

## MORNINGTON ROAD, BINGLEY

Following the sale of the former school in November 2018 the proceeds of sale were now held in a trust account by the Council as Corporate Trustees.

The City Solicitor presented a report (**Document “B”**) which invited the Trustees to review the current position and consider the options and recommendations detailed in the document for the allocation of the proceeds of sale which amounted to two hundred and twenty six thousand pounds (£226,000.00). He explained that a legal process had been followed as the building had been a trust property and governed by trust deeds. The purpose of the Trust was for the education of adults and children in the area known as the Bingley Improvement Area District (BIAD) and any award would have to be connected with education in the specified area. Members were informed that the availability of the funds had been publicised and an invitation for expressions of interest for awards had been circulated. The City Solicitor’s report clarified that some risk was attached to the funds, as the trust deed mentioned the possible repayment of a grant from HM Treasury in relation to the former school building as the land had been donated by local benefactors and the advice from the Charity Commissioners suggested that reasonable provision be made for this eventuality. He reiterated the legal advice detailed in the report and stated that the Trustees had to abide by the law. A number of options were then presented for the Trustees’ consideration.

A Ward Councillor was present at the meeting and commented that:

- The resource was welcomed and it was important that it was spent on education benefits.
- The Legal criteria stated that as many people as possible should benefit from the funds.
- Proposed option 2 was the most balanced, though it did not answer all the questions.
- Detailed consideration would have to be given to which building would receive the investment.
- The existing Council library in Bingley paid a peppercorn rent.
- The Friends of Bingley Pool were hoping to undertake a Community Asset Transfer (CAT) during 2020.
- Investment in the pool would provide advantages for many people.
- The suggestions proposed by Bingley Town Council were reasonable and should be supported.
- Option 2 should be supported subject to further refinement.

A Bingley Town Councillor was present and stated that:

- How fixed was the BIAD area and could it be extended to the Town Council area?
- It would be more relevant to use the area covered by the Town Council.
- Would the legal, insurance and other costs be met by the Council?
- Option 2 was preferable.
- Bingley Town Council had not requested funding, but had submitted suggestions.
- The Town Council could administer funds through a grant scheme.

- Other applications may be received.
- Option 3 would require a continued pot of money and the investment of returns would have to be investigated and reviewed.

A representative from the Down Syndrome Training and Support Service Ltd was present at the meeting and explained that:

- Down syndrome was the most common form of learning disability.
- People with Down syndrome lived healthy lives, so education was the key.
- A person with Downs could and would learn.
- Strategies and learning programmes had been developed.
- The Service provided training for all education establishments and was recognised as a centre for excellence.
- The Service filled a large gap for people with learning disabilities.
- They supported young people in employment and wanted to progress the project.
- The Service was vital for many families.
- Any funding would be well received.

The Headteacher of Myrtle Park Primary School addressed the Members and reported that:

- During the past eight years the school had been restructured twice.
- Extreme cuts had been made and staff could not be replaced.
- The school received very little pupil premium.
- A number of pupils at the school used the Down Syndrome Centre.
- Pupils at the school had Education, Health and Care Plans.
- The school was on a 'requires improvement' journey to 'good'.
- Investment would be welcomed in the building, the children and the staff.
- Any funds received would be well spent.

The Bingley Town Councillor, representing the Friends of Bingley Pool, made the following points:

- She was a Trustee of the Friends of Bingley Pool.
- The organisation was working with Bradford Council towards a CAT.
- The pool was an important use for the Town and essential to its liveliness.
- The organisation would be grateful to receive funding and could apply for matched funding.

A Member acknowledged the situation and the options submitted. He stated that he was a Trustee of an educational trust and proposed a hybrid option that mainly followed option 3. The need to maintain the original trust funding was accepted and the disposal of the capital sum in the short term was not favourable, therefore, he suggested that the proceeds of the sale be invested and the interest accrued be awarded on a yearly grant basis. The scheme would maintain the ideals of the Trust for the people in the BIAD and provide an opportunity for a whole range of individuals to request funding.

Another Member supported the proposal and noted that the Council, as Trustee, would retain and invest the capital sum. Organisations would then be able to

apply on a yearly basis for grants.

The Chair echoed the previous sentiments. He noted the expressions for funding that had been submitted and indicated that some interest would have accrued since the sale in November 2018. The funds and interest accumulated could be utilised this year and future applications could be considered on a yearly basis by the Committee, sitting as Trustees. It was stated that the applications would have to be for specific items or costs incurred in line with the educational purpose of the Trust. Members also agreed that the awards for those expressions of interest received should not amount to more than £2,000 and that the administration of the scheme would be covered by the City Solicitor's Department as employed officers supporting the Council acting as the Corporate Trustee.

The Bingley Town Councillor indicated that it would be beneficial for Bingley Councillors to be involved on the Trustee Board, however, it was acknowledged that this could create conflicts of interest and a suggestion that the process could be undertaken in consultation with Bingley Town Council and the Bingley Ward Councillors was put forward instead. The area covered would also be that of the original BIAD.

In conclusion the Chair stated that the Committee, sitting as Trustees, could use their discretion this year, however, clearly defined proposals would be required for future bids and the criteria would be based on the original Trust Deed.

**Resolved –**

- (1) That the proceeds of the sale be invested and expressions of interest for education funding be considered on a yearly basis by the Trustees.**
- (2) That an award of £2,000, paid out of interest accrued and capital funds, be granted to each of the following organisations:**
  - (i) Friends of Bingley Pool for the provision of adult and children's swimming lessons;**
  - (ii) Myrtle Park Primary School for outdoor provision in Early Years and Key Stage 1; and**
  - (iii) The Down Syndrome Training and Support Service Ltd.**
- (3) That future applications for funding in subsequent years from the Trust be submitted by 31 January.**

***ACTION: City Solicitor***

Chair

**Note: These minutes are subject to approval as a correct record at the next meeting of the Regulatory and Appeals Committee.**

THESE MINUTES HAVE BEEN PRODUCED, WHEREVER POSSIBLE, ON RECYCLED PAPER

# SMALL CHARITY CONSTITUTION

Suitable for small charities with an annual income under £5,000 that don't own a building or employ people and do not intend to register with the Charity Commission.

## 1 NAME

The charity's name is \_\_\_\_\_

## 2 THE PURPOSES OF THE CHARITY ARE:-

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## 3 TRUSTEES

The charity shall be managed by a committee of trustees who are appointed at the Annual General Meeting (AGM) of the charity.

## 4 CARRYING OUT THE PURPOSES

In order to carry out the charitable purposes, the trustees have the power to:

- (1) raise funds, receive grants and donations
- (2) apply funds to carry out the work of the charity
- (3) co-operate with and support other charities with similar purposes
- (4) do anything which is lawful and necessary to achieve the purposes

## 5 MEMBERSHIP

The charity shall have a membership. People who support the work of the charity and are aged 18 or over, can apply to the trustees to become a member. Once accepted by the trustees, membership lasts for 3 years and may be renewed. The trustees will keep an up-to-date membership list.

The trustees may remove a person's membership if they believe it is in the best interests of the charity. The member has the right to be heard by the trustees before the decision is made and can be accompanied by a friend.

## 6 ANNUAL GENERAL MEETING - AGM

- (1) The AGM must be held every year, with 14 days notice given to all members telling them what is on the agenda. Minutes must be kept of the AGM.
- (2) There must be at least \_\_\_ members present at the AGM.
- (3) Every member has one vote.
- (4) The trustees shall present the annual report and accounts.
- (5) Any member may stand for election as a trustee.
- (6) Members shall elect between 3 and 10 trustees to serve for the next year. They will retire at the next AGM but may stand for re-election.

## **7 TRUSTEE MEETINGS**

- (1) Trustees must hold at least 3 meetings each year. At their first meeting after the AGM they will elect a chair, treasurer and secretary. Trustees may act by majority decision.
- (2) At least 3 trustees must be present at the meeting to be able to take decisions. Minutes shall be kept for every meeting.
- (3) If trustees have a conflict of interest they must declare it and leave the meeting while this matter is being discussed or decided.
- (4) During the year, the trustees may appoint up to 2 additional trustees. They will stand down at the next AGM.
- (5) The trustees may make reasonable additional rules to help run the charity. These rules must not conflict with this constitution or the law.

## **8 MONEY AND PROPERTY**

- (1) Money and property must only be used for the charity's purposes.
- (2) Trustees must keep accounts. The most recent annual accounts can be seen by anybody on request.
- (3) Trustees cannot receive any money or property from the charity, except to refund reasonable out of pocket expenses.
- (4) Money must be held in the charity's bank account. All cheques must be signed by 2 trustees.

## **9 GENERAL MEETINGS**

If the Trustees consider it is necessary to change the constitution, or wind up the charity, they must call a General Meeting so that the membership can make the decision. Trustees must also call a General Meeting if they receive a written request from the majority of members. All members must be given 14 days notice and told the reason for the meeting. All decisions require a two thirds majority. Minutes must be kept.

- (1) **Winding up** - any money or property remaining after payment of debts must be given to a charity with similar purposes to this one.
- (2) **Changes to the Constitution** - can be made at AGMs or General Meetings. No change can be made that would make the organisation no longer a charity.
- (3) **General Meeting** - called on written request from a majority of members.
- (4) Trustees may also call a General Meeting to consult the membership



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**CHARITY COMMISSION  
FOR ENGLAND AND WALES**

1.

Guidance

# **Charities and investment matters: a guide for trustees**

Updated 1 August 2016

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**The Charities (Protection and Social Investment) Act 2016 has introduced a statutory power for charities to make social investments. The commission's [interim guidance](#) outlines the considerations for trustees when making social investment decisions. It will be reviewed in 2017.**

**Other than the addition of this interim guidance and the removal of the definition of social investment from Annex 1, the substance of this guidance has not been changed. The existence of the power and its practical application for charities will be one of the issues the commission will consider as part of a future review of its investment guidance.**

## **1. Introduction**

### **1.1 What is this guidance about?**

This guidance is about how to make decisions about investing charity funds.

All charities are able to invest, and investments can be a major source of funding for them. However, investing also exposes charities to risks which, if not properly managed, can affect not just the charity itself but the public's trust and confidence in the sector more generally. Because of this, it's important that charities manage these risks and operate within the law.

As the regulator of charities in England and Wales, the Charity Commission has produced this guidance to support charities and their trustees in confidently making decisions about investments that comply with their duties.

## **1.2 Why do charities invest?**

On one level, the answer is quite simple - they invest in order to achieve a return so they can further their charity's aims. Usually, this means the best financial return within the level of risk considered to be acceptable - in this guidance the commission refers to this as 'financial investment'.

However, charities are increasingly interested in how they can invest to directly further their aims as well as achieve a financial return - in this guidance the commission refers to this as 'programme related investment'.

Where the investment does not fit wholly within either of these categories, charities can make 'mixed motive investments' if their trustees decide that this is in the charity's best interests.

These are all valid investment approaches for charities, although different considerations and legal duties apply.

## **1.3 What does this guidance cover?**

This guidance sets out the legal and good practice framework for the investment of charity funds. It covers:

- financial investment - investing to produce the best financial return within the level of risk considered by the charity to be acceptable
- the key steps in making financial investments
- programme related investment - using assets to directly further the charity's aims while potentially also generating a financial return
- the key steps in making a programme related investment
- mixed motive investments - investing to both further a charity's aims and generate a financial return

## **1.4 Who is this guidance for?**

Trustees and those who make decisions on behalf of trustees about a charity's investments and assets should use this guidance as a tool to help them make confident, informed decisions and publicly to report on those decisions.

The duties set out in this guidance are based on the law relating to Trust Law, but directors of charitable companies (who are charity trustees) are likely to have similar duties when investing their charity's assets.

[Section 2](#) ‘Executive summary’ provides a brief overview of the investment of charitable funds and the legal requirements and good practice recommendations that apply.

Charities that only invest cash, perhaps those that receive all their income through grants, are likely to find [section 2](#) and [section 9](#) ‘Cash deposits’ to be of help. The other sections in this guidance provide detail for charities that are interested in a wider range of investments.

### **1.5 ‘Must’ and ‘should’ what the commission means**

The word ‘must’ is used where there is a specific legal or regulatory requirement that you must comply with. ‘Should’ is used for minimum good practice guidance you should follow unless there’s a good reason not to.

The commission also offers less formal advice and recommendations that trustees may find helpful.

### **1.6 What is the status of this guidance?**

Trustees are responsible for making decisions about their charity’s investments. The commission has written this guidance to support trustees in making these decisions so that they can comply with their duties. While it cannot provide specific investment or legal advice, trustees who follow this guidance should be able to support the decisions they have taken.

The guidance is complemented by [Legal underpinning: charities and investment matters](#), which explains in more detail the law and case law on investment matters for charities.

### **1.7 How has the guidance changed?**

This guidance replaces the commission’s previous publications Investment of Charitable Funds: basic principles (CC14) (February 2004), Investment of Charitable Funds: Detailed guidance (February 2003) and Charities and Social Investment (2003). It is a complete rewrite in a new format.

## **2. Executive summary**

Charities invest so that they can further their charitable aims.

They can invest in a number of ways to achieve their aims, and there are specific legal duties and decision making processes attached to each.

If trustees have considered the relevant issues, taken advice where appropriate and reached a reasonable decision, they are unlikely to be criticised for their decisions or adopting a particular investment policy.

In this guidance the commission has concentrated on financial investment and programme related investment. It has also included some guidance on mixed motive investment ([section 11](#)). This is another approach to investing and is an emerging area of interest for some charities.

## **Financial investment**

The purpose of financial investment is to yield the best financial return within the level of risk considered to be acceptable - this return can then be spent on the charity's aims.

In order to act within the law, trustees must:

- know, and act within, their charity's powers to invest (legal requirement)
- exercise care and skill when making investment decisions (legal requirement)
- select investments that are right for their charity; this means taking account of:
  - how suitable any investment is for the charity
  - the need to diversify investments (legal requirement)
- take advice from someone experienced in investment matters unless they have good reason for not doing so (legal requirement)
- follow certain legal requirements if they are going to use someone to manage investments on their behalf (legal requirement)
- review investments from time to time (legal requirement)
- explain their investment policy (if they have one) in the trustees' annual report (legal requirement)

The commission also recommends that trustees should:

- decide on the overall investment policy and objectives for the charity
- agree the balance between risk and return that is right for their charity; this may include a wide range of factors that will impact on return including environmental, social and governance factors
- have regard to other factors that will influence the level of return, such as the environmental and social impact of the companies invested in and the quality of their governance
- be aware that some investments may have tax implications for the charity
- invest any permanently endowed funds in a way that helps them to meet their short and long-term aims
- decide whether to adopt an ethical, socially responsible or mission related approach to investment and ensure that it can be justified

## **An example of financial investments**

A medium sized local arts charity receives its income mainly from grants and ticket sales. Surplus funds not needed in the short or medium term are invested in a common investment fund designed for longer term investment, while grants received in advance are invested on the money market. The charity also owns a block of garages which it rents out at the market rate. Some or all of the return on these investments is spent each year on the charity's beneficiaries.

## **Programme related investment (PRI)**

**The Charities (Protection and Social Investment) Act 2016 has introduced a statutory power for charities to make social investments. The commission's [interim guidance](#) outlines the considerations for trustees when making social investment decisions. It will be reviewed in 2017.**

**Other than the addition of this interim guidance and the removal of the definition of social investment from Annex 1, the substance of this guidance has not been changed. The existence of the power and its practical application for charities will be one of the issues the commission will consider as part of a future review of its investment guidance.**

The aim of a PRI is to use a charity's assets directly to further its aims in a way that may also produce some financial return for the charity. PRI is different from financial investment in that the justification for making a PRI is to further the charity's aims: this means that charities are not bound by the principles or law for investment (see [section 10](#)).

In order to fulfil their duties and act within the law, trustees:

- must be able to show that the PRI is wholly in furtherance of the charity's aims (legal requirement)
- should make sure that any benefit to private individuals is necessary, reasonable and in the interests of the charity
- should consider reasonable and practical ways to exit from a PRI if it is no longer furthering the charity's aims

### **An example of PRI**

A charity that works to help and advise the unemployed usually makes grants to charities and other organisations that help unemployed people back into work. However, it has decided in certain cases to make loans instead of grants. It expects that loans will be repaid, potentially with some interest, enabling the charity to spread the work it does among more beneficiaries.

### **Mixed motive investment**

**The Charities (Protection and Social Investment) Act 2016 has introduced a statutory power for charities to make social investments. The commission's [interim guidance](#) outlines the considerations for trustees when making social investment decisions. It will be reviewed in 2017.**

**Other than the addition of this interim guidance and the removal of the definition of social investment from Annex 1, the substance of this guidance has not been changed. The existence of the power and its practical application for charities will be one of the issues the commission will consider as part of a future review of its investment guidance.**

Where an investment cannot be wholly justified as either a financial investment or a PRI, it may be possible to justify it as a mixed motive investment. Considerations for trustees should include:

- the justification for making the mixed motive investment that will need to be established before making the investment
- the suitability of a mixed motive investment for the charity
- whether there is a need to take professional advice before making the investment
- whether any private benefit arising from the investment will be acceptable

## **3. The legal framework for financial investment**

Trustees have to comply with certain legal requirements and duties when investing their charity's assets for a financial return. This section explains what they are and how charities can work within them, and also sets out some matters of good practice.

### **3.1 Can all charities make financial investments?**

#### **The short answer (legal requirement)**

Yes. All charities can make financial investments. A charity's specific powers of investment may depend on its constitutional form (for example, whether a charity is unincorporated or a company). In addition, a charity's governing document may place some conditions or limitations on the use of any power of investment.

#### **In more detail**

Most unincorporated charities have a 'general power of investment'. This allows trustees to invest the charity's funds in any asset that is specifically intended to maintain and increase its value and/or produce a financial return. When using this power, trustees must comply with the duties described in [section 3.2](#).

The governing document may set out additional provisions, restrictions or exclusions on the types of investments a charity can make; these may take priority over, or affect, the general power of investment.

For more information about investment powers, restrictions and exclusions, see [Legal underpinning: charities and investment matters \(part 1\)](#).

The investment powers available to trustees of 'charitable companies' are normally set out in its articles of association and are usually similar to the general power of investment referred to above. Where a charitable company acts as a trustee of an unincorporated charity, the 'general power of investment' applies.

### **3.2 What is the trustees' role when making financial investment decisions?**

#### **The short answer (legal requirement)**

Trustees have overall responsibility for the investment of a charity's funds. This means that they have a crucial role to play in making strategic decisions about how to use a charity's assets to achieve its aims. However, trustees may choose to delegate day to day decisions about investments to a third party.

#### **In more detail**

Trustees must:

- use their skills and knowledge in a way that is reasonable in the circumstances ('the duty of care'); for example, a trustee with investment experience should draw on his or her skills and knowledge of investments when making decisions
- consider how suitable any investment is for their charity; trustees must be satisfied that:

- an investment type or class is appropriate for the charity (for example, shares)
- the investment within that type or class is appropriate for the charity (for example, shares in a specific bank)
- consider the need to diversify investments (for example, owning shares in a number of different companies)
- take advice from someone experienced in investment matters where they consider they need it
- review investments (and their investment manager) from time to time, changing them if necessary

If trustees can demonstrate that they have considered the relevant issues, taken advice where appropriate and reached a reasonable decision, they are unlikely to be criticised for their decisions, or for adopting a particular policy.

These legal requirements do not apply to trustees of ‘charitable companies’. However, they should adopt these principles as good practice when making investment decisions.

For more information about trustee’s duties, see [Legal underpinning: charities and investment matters \(part 1, section 3\)](#).

### **3.3 Can a charity decide to make ethical investments?**

#### **The short answer**

Yes. Trustees of any charity can decide to invest ethically, even if the investment might provide a lower rate of return than an alternative investment. Ethical investment means investing in a way that reflects a charity’s values and ethos and does not run counter to its aims. However, a charity’s trustees must be able to justify why it is in the charity’s best interests to invest in this way. The law permits the following reasons:

- a particular investment conflicts with the aims of the charity
- the charity might lose supporters or beneficiaries if it does not invest ethically
- there is no significant financial detriment

#### **In more detail**

Trustees must ensure that any decision that they take about adopting an ethical investment approach can be justified within the criteria above. They must be clear about the reasons why certain companies or sectors are excluded or included. Trustees should also evaluate the effect of any proposed policy on potential investment returns and balance any risk of lower returns against the risk of alienating support or damage to reputation. This cannot be an exact calculation but trustees will have to assess the risk to their charity.

An ethical investment approach may involve one or a combination of the following approaches:

- **negative screening:** this means avoiding investment in companies or sectors or companies undertaking a particular activity or operating in a way which may be harmful to the charity’s interests

- positive screening: this means investing all or part of an investment portfolio in companies or sectors which reflect a charity's values in areas like environmental protection, health, employment or human rights, or in a wider range of companies that demonstrate good corporate social responsibility and governance; for example, positive screening might involve only investing in companies that have targets/proven records for reducing their carbon footprint
- stakeholder activism: this is where a charity, as a shareholder, exercises its voting rights in order to influence a company's policies in a way that reflects its values and ethos; this could mean that a charity might invest in companies whose environmental policies it does not approve of in order to encourage more responsible business practices within those companies - it is also possible to engage in stakeholder activism as a programme related or mixed motive investment (see [section 8](#))

### **Examples of ethical investment strategies**

(1) An environmental charity with aims to protect wildlife and the environment decides to adopt an ethical investment policy. It decides to avoid investing in companies that have a poor environmental record (for example, recent cautions or convictions for pollution offences).

(This approach would be referred to as negative screening)

(2) A charity established with the aim of educating the public in the causes and prevention of heart disease decides to adopt an ethical approach to the investment of its funds by choosing to invest in companies that promote healthy living through their products and services. This might include running gyms, production of sports equipment or the production of healthy food products.

(This approach would be referred to as positive screening)

For more information on ethical investment, see [Legal underpinning: charities and investment matters \(part 1, section 4\)](#).

## **4. Setting a charity's investment objectives**

Trustees should be clear about exactly what the charity is trying to achieve by investing its funds. This will be different for each charity and will depend on its aims, operating model, timescales and resources. For example, the investment objective may be to maximise income, preserve capital or ensure stability of income.

### **4.1 How should a charity set its investment objectives?**

#### **The short answer**

In simple terms, a charity needs to be clear about what it wants to do, how it intends to do it and what the timescale for delivery will be. These considerations will govern how it decides what its investment objective will be. If a charity is permanently endowed, it will need to consider balancing capital growth and income return in order for the charity to meet its aims and its beneficiaries' current and future needs.

## **In more detail**

The trustees may find it helpful to review the charity's overall financial position and how they are using the charity's assets to achieve its aims when setting the investment objectives. This will mean considering short and long term financial commitments, as well as the charity's anticipated income.

For example, they may want to consider:

- immediate financial needs - for example, cash required for use in the near future that needs to be sufficient and easily accessible
- future spending commitments - they should be satisfied that there is sufficient cash available to meet these needs
- whether the charity has restricted funds - this means that there are limitations on how the funds can be used
- longer term organisational objectives - for example, projects, initiatives, changes in strategy or other spending that the charity is planning and how they will be resourced
- past patterns of expenditure and anticipated demand for the charity's support as an indication of future trends
- unplanned changes in activity or events that may impact on the charity. This includes the wider economic and financial outlook - for example, the likelihood of inflation or deflation, or changes in interest rates

The trustees should then be able to identify funds that:

- need to be available on instant access
- can be used for short term investment
- they can afford to tie up for longer periods of time
- will be used to react to unplanned events

## **4.2 What risks should a charity consider when making investments?**

### **The short answer**

Risk is part of the investment process and there are a number of risks that trustees should take into account. Before making any investment decisions, trustees should consider what is the appropriate level of risk that they want to, or are able to accept. As part of their duty of care, the trustees must be satisfied that the overall level of risk they are taking is right for their charity and its beneficiaries.

### **In more detail**

Setting investment objectives is not about avoiding risk, but about recognising and managing it. If a risk materialises and results in a loss to the charity, the trustees will be better protected if they have properly discharged their duties and identified and considered the management of the risk. A loss might mean a low return on an investment or the loss of some, or all, of the amount invested, but it can also be about loss of reputation, perhaps through investing in an unpopular or discredited company. As with any loss or setback, the trustees should review the circumstances of the loss, their risk appetite and how they identify and manage risk generally.

They should also take the opportunity to learn from their experiences in order to benefit the charity in the future.

Funds invested for the short and medium term should be relatively risk free as charities will want to avoid sudden drops in capital values which could reduce their available funding. A drop in capital value for funds invested for the longer term is less critical because such investments can be held until their value has recovered.

Although it might be difficult for trustees to justify an investment policy that involves the charity taking on a high level of overall risk, it may be appropriate to include certain high risk investments within the overall portfolio.

Some of the main risks associated with investment and ways that they can be managed are outlined in the next section. Charities should consider these when deciding what investments are suitable for their charity.

### **Capital risk**

There are 2 main risks to capital:

- loss of capital: the main risk for charities arising directly from investments is that they could lose capital and/or income as the value of those investments change; all investments involve some degree of risk because their value can go down as well as up - generally speaking risk and return go together - the more risky the investment, the higher the possible return, but also the greater the possibility of losing money
- volatility risk: this is the existence of variability in the price of an asset like a share; some asset types are more volatile than others, which needs to be taken into account when selecting an investment and considering its place in the overall investment portfolio

### **Managing capital risks**

Capital risk can be mitigated by having a diversified portfolio of assets - if the investment return from one asset class falls, the losses may be offset by better investment returns in a different asset class. A diverse portfolio can help:

- reduce the risk that the loss from a single investment, or type of investment, could significantly harm the charity's viability
- protect the charity's investments from sudden variations in the market by balancing the levels of risk and return in the portfolio
- ensure that the charity's needs for both income and capital growth are met, particularly where permanent endowment is involved

### **Liquidity risk**

This is about whether a charity will be able to raise the cash to meet its obligations when they fall due or at short notice. Certain types of investment are inherently less liquid than others: for example, land cannot usually be converted into cash as quickly as listed shares. Other types may demonstrate different levels of liquidity at different times; this is particularly so where the market conditions are unpredictable.

## **Managing liquidity risk**

Some asset classes are more suitable as short-term investments and others are better for the medium or long term. Charities should consider their time frame for investing and the characteristics of different types of investments.

### **Market risk**

There are different kinds of market risk and these include:

- inflation risk: if the investment does not at least keep pace with inflation, it will fall in value in real terms
- interest rate risk: investments that pay a fixed rate of interest regularly may become unattractive if held for a long period if interest rates available elsewhere rise above that fixed rate
- exchange rate risk: assets based in other countries will generally be valued in different currencies; if the currency falls in value relative to sterling, the investment may be worth less, even if its home currency value has increased
- regulatory and governance risks: some investments are unregulated or based in countries where the regulation is less rigorous - some regulated investments also invest in unregulated funds or assets; these non mainstream funds carry a governance risk - there is a risk of the investment going wrong or falling in value, sometimes significantly, as a result of poor management and lack of regulatory controls

## **Managing market risk**

Trustees should:

- be aware of likely changes in inflation rates, interest rates and exchange rates
- consider investing only, or investing substantially, in markets where financial services are closely regulated and compensation schemes are in place

For more information on UK compensation schemes, see [Financial Services Compensation Scheme](#)

## **Valuation risk**

Some investments such as property are not valued independently on a daily basis. The actual value of these investments will depend on the price that can be realised at the time of sale. There is a risk that the estimated valuation until this time may prove inaccurate. If there is a need to realise capital urgently, it may be that a lower price must be accepted to find a buyer quickly.

## **Managing valuation risk**

Trustees should:

- be aware of valuation risk and of how this risk can be accentuated by other risks

- consider valuation risk together with the overall financial position of the charity; this might mean consideration of, for example, its risk appetite, its liquidity needs and the diversification of its investment portfolio
- understand the valuation risk that can be inherent in certain investments and discuss this with investment managers

### **Counterparty risk**

This is the risk that a firm with which the charity does investment business (for example, a bank, stockbroker or investment manager) will default on its contractual obligations.

### **Managing counterparty risk**

Trustees should:

- look at whether the business is regulated
- look at whether there is any compensation scheme to cover all or part of any loss the charity might incur
- ensure as far as possible that investments are held with a reputable firm
- agree performance measures so that all parties know what is expected of them
- establish monitoring and review arrangements to make sure the charity continues to be satisfied with performance
- review contractual agreements periodically to make sure that they continue to be appropriate for the charity's needs

### **Tax risks**

- Although tax legislation places no restrictions on what a charity can invest in, some investments may be treated as non-qualifying expenditure, with tax consequences. The charity may lose exemption from tax on an amount of income or gains equal to the amount invested.
- If making foreign investments, where there are not equivalent tax reliefs for UK charities in the countries concerned, the investment return may be reduced by foreign taxes.

### **Managing tax risk**

Trustees should:

- refer to HMRC's guidance. [HMRC charities: detailed guidance notes. Annex III: Approved charitable investments and loans](#)
- consider the impact of incurring any tax liability on its investments and take advice where appropriate; it may not always be the case that incurring a tax liability on an investment should mean it is excluded from a portfolio

### **Environmental, social and governance (ESG) risk**

When considering which companies and organisations to invest in, charities are increasingly taking into account such factors as impact on climate, employment practices, sustainability, human rights, community impact, executive compensation and board accountability. These

are all example of ESG risk areas which can have long term impacts and can affect the value of a company's shares positively or negatively depending on how the risk areas are managed.

## **Managing environmental, social and corporate governance risk**

Trustees can:

- decide on the importance and extent of ESG criteria in their investment policy
- look at the reputational risk to the charity that might arise from their ESG policy (or lack of one)
- make sure that any investment manager they use is aware of and willing to act in accordance with their ESG policy
- recognise that the extent to which a company manages ESG risk may have an effect on the returns that it can offer and its long term viability
- look at whether a company discloses its ESG risk management processes and how it verifies that disclosure

### **4.3 What should an investment policy cover?**

#### **The short answer**

A charity's investment policy should set out in writing what its investment objectives are and how it intends to achieve them.

#### **In more detail**

A charity's investment policy will usually include the following information:

- the scope of its investment powers (see [3.1](#))
- the charity's investment objectives (see [4.1](#))
- the charity's attitude to risk (see [4.2](#))
- how much is available for investment, timing of returns and the charity's liquidity needs
- the types of investment it wants to make, this might include ethical considerations (see [3.3](#))
- who can take investment decisions (for example, trustees, an executive, an investment adviser or manager)
- how investments will be managed and benchmarks and targets set by which performance will be judged
- reporting requirements for investment managers

## **5. Deciding what to invest in**

This section sets out some of the basic types of financial investment that are available to charities. Once the trustees have established their charity's investment policy, they (or their investment managers), can decide on the type and range of assets that will achieve their investment objectives.

### **5.1 What can a charity invest in?**

## **The short answer (legal requirement)**

Trustees can make financial investments in any asset that is specifically intended to maintain and increase its value and/or produce a financial return.

Trustees must also be clear about the difference between investment and trading (see [5.2](#) and [Legal underpinning: charities and investment matters \(part 1\)](#))

## **In more detail**

Trustees can invest in any type of investment while following the principles set out in this guidance. Possible types of investment include:

- interest bearing [cash](#) deposits in bank or building society accounts (see [section 9](#))
- shares in a listed company (listed equities)
- interest bearing loans to a company or the government (bonds or gilts)
- buildings or land
- common investment funds and other collective investment schemes (see [5.3](#))
- non traded equity in private companies
- hedge funds
- commodities
- derivatives

In all cases trustees must consider:

- how suitable any investment is for their charity - this will be influenced by the charity's attitude to risk across its investment portfolio
- the need to have a mix of assets in their portfolios - this can protect the charity's investments from sudden variations in the market and reduce the risk of the loss

Some types of asset, for example derivatives and commodities, are likely to be suitable only as part of a well-diversified investment portfolio because of the higher risk they can represent. Trustees should take professional advice where appropriate in selecting and reviewing these types of investment.

## **5.2 What is the difference between trading and investment?**

If trustees purchase an asset with the intention of selling it for a profit after a short amount of time, it is likely to be considered as trading. Being clear about the difference is important because:

- a charity itself can only undertake trading activity when this is directly furthering or supporting its aims
- profits made from trading are not always subject to tax relief

This distinction is particularly important when looking at derivatives, property, commodities and other opportunities which can be regarded either as an investment or as trading, depending on the context in which they are made. Trustees should be able to demonstrate their intention through their decision making.

For more information on:

- trading see [Trustees, trading and tax \(CC35\)](#)
- what charities can invest in, see [Legal underpinning: charities and investment matters \(part 1\)](#)
- investments primarily intended to further the charity's aims, see [section 10](#)

### **5.3 Collective investment schemes (pooled funds) - what are the benefits for charity investors?**

#### **The short answer**

This form of investment can help charities diversify their investments and thus reduce their investment risk in a more cost effective way than investing directly in individually selected investments. Such schemes can form part, or all, of their investment portfolio, depending on the charity's investment policy.

#### **In more detail**

Collective investment schemes are investment vehicles where the assets of individual investors are pooled together with those of other investors to achieve appropriate levels of diversification. They allow charities to reduce investment risk by spreading their investments more widely than would normally be possible if they were to directly invest in the individual assets held by the scheme. Investing directly in particular assets can usually mean higher costs, both in terms of money and administration, to a charity. This means that this type of investment will be particularly attractive to charities with smaller sums to invest.

#### **An example of a collective investment scheme**

A collective investment scheme that many charities use is called a common investment fund (CIF). CIFs are regulated charities in their own right and only charities established in the United Kingdom can invest in them. They give charities of all sizes the ability to invest in a tax efficient way in a range of investments to achieve a professionally managed, diversified and balanced portfolio.

However, diversification through pooled funds does not eliminate all investment risks. Certain funds will be riskier than others, often depending on the extent to which they are diversified amongst different asset classes, different sectors and different countries or regions.

Trustees have to consider the suitability and diversification of the underlying investments in any pooled fund, as well as the suitability of the fund manager. Particular funds will be designed to take into account different investment strategies, for example ethical, short term income or long term growth. This gives charities the opportunity to select one or more to fit with their investment policy.

Each pooled fund will produce documentation which should include such details as:

- its overall aims
- its ethical stance (if any)

- performance reporting details
- the asset mix
- the diversification of assets
- all the costs involved in the administration of the fund

Before investing, trustees should review these documents and regularly review them after investment, to ensure that each selected pooled fund continues to meet the charity's needs.

For more information, see [Common investment funds: a basic guide to their regulation](#)

## **6. Who can manage and make decisions about investments?**

The previous sections focus on what needs to be considered when making decisions about investments. This section is about who can make the decisions and, where it is not the trustees, what the trustees should do to maintain oversight and control.

### **6.1 What arrangements should a charity put in place to make decisions about investments?**

#### **The short answer**

The arrangements for making these decisions will be different for each charity depending on:

- its internal resources and expertise
- the relative importance of its investments in terms of its ability to achieve its aims

Whatever arrangements are put in place, the trustees should be able to demonstrate that they have retained overall control of decision making and have complied with their duties.

#### **In more detail**

A charity's trustees have overall responsibility for investment decisions. They might find it helpful to consider the following points:

- although trustees do not need to have specialist investment knowledge themselves, charities that have invested, or want to invest, significant funds will find it helpful to have a trustee with specialist knowledge of investments on its board
- some charities may find it helpful to establish internal investment committees or a sub-committee of trustees and/or officers to advise the trustee board on the more detailed aspects of its investment policy (for example, asset allocation); the trustees should be clear about the remit of any sub-committees, what they can make decisions about, what financial and other limits there are on their decision making and how and how often these decisions are reported to the trustees
- trustees should ensure that details of their investment approach and key decisions are recorded in writing; this will enable them to demonstrate that they have considered the relevant issues, taken advice if appropriate and reached a reasonable decision
- trustees should agree how frequently and at what level they will review their charity's investments

## **6.2 What advice must trustees take?**

### **The short answer (legal requirement)**

Trustees must take and consider advice from someone experienced in investment matters before making investments and when reviewing them, unless they have good reasons for not doing so. They may decide not to take advice if they conclude that it is unnecessary, or inappropriate in the circumstances. They may decide not to take external advice if they have sufficient experience within the charity.

### **In more detail**

The law says that an investment adviser must be someone who is reasonably believed by the trustees to be qualified to give it by his or her ability in and practical experience of financial and other matters relating to the proposed investment.

The most usual options for trustees are:

- an investment manager
- an investment adviser (who may be independent or tied)
- a fellow trustee, if one of the trustees has suitable financial experience and ability
- some other individual who meets the criteria set out above

Independent financial advisers (IFAs) must be authorised by the Financial Services Authority to give advice. They are able to sell the products of many different companies. Tied advisers, such as those working for banks and building societies, are only able to offer the products of their own company.

Trustees need to be careful to ensure that they receive impartial advice. If any trustee has a connection that might benefit directly or indirectly from any financial advice provided to the charity, this should be identified and managed as a conflict of interest.

Trustees who give investment advice are responsible for the quality of the advice which they offer. Like any other adviser, they may be liable to the charity if it makes a loss as a result of their poor or negligent advice. The other trustees must also consider any advice from a fellow trustee objectively and act in the best interests of the charity.

## **6.3 Should a charity manage investments itself or use the services of an investment adviser or manager?**

### **The short answer**

The charity's trustees should decide whether it would be more efficient to manage their investments by:

- managing their investments themselves where they (or the charity's staff) have the necessary expertise
- using an investment manager or a stockbroker to advise them in managing their investments (advisory investment managers)

- giving investment managers some powers to make decisions about their investments on their behalf (discretionary investment managers)

### **In more detail**

When deciding the most appropriate approach for their charity, trustees may wish to consider:

- whether they (or the charity's staff, if any) have the specific skills needed to manage investments
- the amount they are able to commit for long or shorter term investment
- the cost of appointing an investment adviser or manager - this includes costs relating to the initial appointment and all ongoing costs

They will also need to consider whether they are using the services of an investment manager in:

- an advisory capacity - the investment manager will have to contact trustees for confirmation before any transactions are undertaken
- a discretionary capacity - they are giving the investment managers powers to make decisions about their investments on their behalf

## **6.4 What should a charity think about before choosing an investment manager?**

### **The short answer**

If a charity decides to use an investment manager, its trustees should:

- satisfy themselves that an investment manager can perform effectively in line with their investment objectives and policy
- consider how the services offered by a number of different managers meet those needs, and compare them in terms of cost, investment approach and level of service

### **In more detail**

Most charities that decide to use an investment manager usually go through a formal tendering process and meet with a number of shortlisted firms. This process gives the trustees an opportunity to learn more about the potential investment manager and how they will implement the charity's investment policy

Charities should consider:

- whether the response to the tender meets their needs
- the firm's reputation and track record including short and long term performance, the type and number of portfolios held and the value of assets it manages; trustees should also bear in mind that a good performance history does not necessarily guarantee a good performance in the future
- what experience the investment manager has in charity investments including:
  - knowledge about investing for the charitable sector
  - knowledge of regulations that apply specifically to charities

- whether the firm has existing charity clients
- the nature of the investment and risk review process such as how the investments will be selected and managed and what the decision making structure is
- a realistic breakdown of all the fees and charges that may apply to a portfolio in the short and long term
- the reporting arrangements - what will be the frequency and content of written and face to face reports? the charity might request and review sample reports in order to assess past performance in this area
- flexibility - the investment manager's ability and willingness to modify their approach to suit the charity
- the investment manager's capacity to handle any ethical requirements; does the investment manager understand the charity's ethical policy and can they respond to the charity's requirements? What other experience do they have in investment approaches such as ethical investment or mission connected strategies for charities?

## **6.5 Can a charity appoint more than one manager?**

Yes. Charities can appoint more than one investment manager, for example to manage a diversified portfolio or an individual asset class, or to give access to a niche market. This is often the case when large portfolios are involved as it can help to spread some of the risk associated with the manager and the portfolio performance.

## **6.6 What are the trustees' and the investment manager's responsibilities?**

### **The short answer (legal requirement)**

The trustees have overall responsibility for the investment of a charity's funds.

Where an investment manager manages the charity's investments, there must be:

- a written agreement or contract with any investment manager appointed
- an investment policy for the charity which clarifies the responsibilities and remit of the investment manager; the investment manager must select investments in line with these instructions, unless there is a good reason not to do so

### **In more detail**

#### **Written agreement**

There must be a formal written contract between the charity and the investment manager. It should be reviewed from time to time by the charity (taking advice where appropriate).

The investment management agreement will be different depending on whether the management of the funds will be discretionary or advisory. It may also be a simple application form. The investment management agreement must require the manager to follow an investment policy in line with the charity's investment policy, which may be included in the agreement.

If giving the investment manager discretionary powers, trustees must not enter into an agreement that:

- allows the investment manager to appoint a substitute or select their own successor
- reduces the investment manager's normal duty of care, or places a cap on his liability for breach of contract
- allows the investment manager to act in situations that might give rise to a conflict of interest

unless it is reasonably necessary for them to do so.

### **Investment policy**

Trustees who give discretionary powers to an investment manager are legally required to have a written investment policy ([Section 4.3](#)) that covers:

- the remit and responsibilities of any investment manager
- the principles that any investment manager must follow when taking any investment decisions on behalf of the charity

It should be clear from the investment policy that the functions delegated to any investment manager will be carried out in the charity's best interests. If investing in pooled funds, the trustees and the investment manager should ensure that they only invest in funds that are within the remit of the charity's investment policy.

Preparing the policy statement cannot be delegated to the investment manager, but trustees can take independent expert advice on its content. Trustees might find it helpful to prepare it in consultation with the proposed investment manager to ensure its terms are workable and achievable.

### **Trustees' duty of care**

Trustees must follow the duty of care when delegating decision making to an investment manager and preparing their investment policy.

Trustees always remain responsible for:

- setting out and reviewing their charity's investment policy on a regular basis
- deciding whether, to whom, and on what terms to delegate management of a charity's investments
- reviewing the suitability and performance of investment managers regularly
- if necessary, ending appointments

## **6.7 Can trustees be liable for the acts of the investment manager**

Legal requirement: a trustee is not liable for any act or default of the investment manager unless he or she has failed to comply with their duty of care when:

- selecting the individual or company
- determining the terms of the charity's agreement with the investment manager
- preparing the policy statement under which the investment manager acts
- carrying out the duties of review

## **6.8 What should a charity consider when looking at an investment manager's charges?**

### **The short answer (legal requirement)**

A charity should:

- be clear about what payments or benefits the manager or other parties receive under the agreement
- be satisfied that these payments or benefits represent good value for money for the charity

### **In more detail**

Trustees should request an outline of all the fees that may apply to a portfolio and ensure there are no unexpected fees (for example, fees the investment manager may pay to a third party for research). The most usual types of fees include:

- a management fee
- commission on transactions
- charges relating to pooled funds which are for investment management, and other related fees
- administrative charges
- performance fees (a proportion of the returns on a fund)
- bank interest deductions
- operating fees
- custody fees
- third party fees including those for further research or other outsourced services

Trustees should also consider any tax implications. For example, fees charged by investment managers may be liable for VAT.

If the charity appoints an investment manager by a tendering exercise, the trustees may be able to use this to satisfy themselves that the fees represent good value for money and are in the interests of the charity.

Trustees may, alternatively, want to consider taking independent professional advice about whether the charity is getting the best value for money from the arrangements with its investment manager. This could involve a one-off arrangement at the time of a strategic review or an ongoing relationship with a consultant.

## **6.9 Who can legally hold financial investments for a charity?**

Legal requirement: charitable companies have a legal identity and can hold investments in their own name. This simplifies the administration involved in buying and selling investments.

Unincorporated charities do not have a separate legal identity and this means that trustees have to hold investments in their own names on behalf of the charity. This can mean extra

administrative costs when buying and selling investments. For this reason, it is often more convenient to appoint a nominee/custodian to hold investments on behalf of the trustee body.

It is up to the trustees to decide whether to appoint a nominee/custodian and whether they will hold some or all of the charity's assets and investments.

For more information, see the guidance on [Appointing nominees and custodians: guidance under s.19 of the Trustee Act 2000](#)

## **7. Monitoring investments and performance**

### **7.1 What must the trustees do to assess the performance of their charity's investments?**

#### **The short answer (legal requirement)**

Trustees must keep their investment portfolio under regular review. Reviews must cover:

- how investments are performing
- the service provided by the investment manager, if used

They should also monitor and review their internal arrangements for managing the charity's investments.

#### **In more detail**

The key areas for trustees to consider when monitoring and reviewing the performance of their charity's investment portfolio can be summarised as:

- measuring investment performance
- deciding who should conduct the review
- reviewing the service offered by an investment manager
- the frequency of reviews
- criteria for intervening

#### **Measuring investment performance**

Trustees should decide on a system of target returns (for example benchmarks) against which they can measure the performance of the charity's financial portfolio over a specified time period. The precise nature of the benchmarks and targets will vary for each charity. Trustees may wish to take expert advice from an independent organisation.

If appointing an investment manager, trustees should agree appropriate benchmarks and targets against which performance can be judged over the time period. This will allow an effective and fair assessment of both the investment manager's overall performance, and also their performance against a particular benchmark. The trustees may also wish to consider and compare the performance of their funds against those belonging to other charities with similar investment objectives.

If funds are underperforming, trustees should seek to understand whether it is for an acceptable reason. Similarly, if funds are performing significantly above average, trustees should ensure that it is not because the charity is exposed to greater risks than it is prepared to accept.

### **Who should conduct the review?**

The review of the charity's investment performance can be carried out in conjunction with the investment manager.

On the other hand, the review of the service provided by the investment manager should be carried out independently of the investment manager. If trustees are unable to make a proper assessment without some expert assistance, they can employ someone who is independent of their investment manager to provide that assistance.

### **Reviewing the service provided by the investment manager**

Trustees must consider:

- whether the terms under which the investment manager is acting are suitable
- how well the manager is performing
- whether the manager continues to be a suitable person to carry out the function
- whether the terms of the appointment remain appropriate
- whether the manager is complying with the policy statement

### **The frequency of reviews**

Trustees may decide to hold reviews on a regular basis or they may hold one in response to other events, for example:

- if there is evidence of inadequate performance
- if there is a change in the economic outlook
- if the charity's financial circumstances change materially

### **Intervening**

Trustees should consider whether they need to intervene, for example by giving directions to the investment manager, or revising or terminating their agreement with the investment manager. They should be prepared to intervene if necessary.

## **8. Other questions on financial investments**

### **8.1 What must be included in the trustees' annual report?**

Legal requirement: where charities are required to present a trustees' annual report and are subject to a statutory audit, they should include within those reports an outline of any policies their trustees have adopted when choosing financial investments.

The report should also contain a statement about the performance of a charity's investments during the year. Where an ethical investment approach has been adopted, this must also be explained.

Charities that are not subject to a statutory audit must still prepare an annual report but do not have to provide such detailed financial information. For example, it is possible that a small charity will not have an investment policy, especially if it relies solely on grant funding for its operations.

For more information, see the guidance [Charity accounting and reporting](#)

## **8.2 What are the tax implications of financial investments?**

### **The short answer (legal requirement)**

Charities can benefit from tax exemptions on their investment income/gains when these are used to further their aims.

However, if certain investments are not deemed by HMRC to be 'approved charitable investments', it may lead to a restriction on the charity's tax reliefs.

### **In more detail**

Certain specified investments automatically qualify as 'approved charitable investments'. Those that do not meet the criteria set out in tax law may be treated as 'non-charitable expenditure'.

Further guidance on this can be found on the HMRC website [HMRC charities: detailed guidance notes. Annex III: Approved charitable investments and loans](#)

Charities considering investments which may be treated as non-charitable expenditure should bear in mind that they will need to be able to satisfy HMRC:

- that the investments are made for the benefit of the charity
- are not for the avoidance of tax, whether by the charity or by any other person

If an investment is treated as non-charitable expenditure the charity may lose exemption from tax on income equal to the amount invested. This may mean that the overall investment return is lower than where the returns are relieved from tax, although this may not always be the case. Trustees should consider what is in the best interests of the charity.

If making foreign investments, charities should be aware that there may not be equivalent tax reliefs for UK charities in the countries concerned, and that the investment return may be reduced by foreign taxes. However, charities should take advice if appropriate, about whether there may be alternative foreign tax reliefs.

## **8.3 What should charities with permanent endowment consider when making financial investments?**

Legal requirement: charities that have a permanent endowment must keep the capital fund invested. Only the income earned from the investment of the capital fund can be spent on the charity's aims. Charities with permanent endowment should be aware that some assets may be more likely to provide capital growth over a long time period while others might provide better income returns. This means that it is important when they are putting together a portfolio of investments to balance:

- the need for enough income to meet the charity's current needs
- the need to increase the value of the investment ('capital growth') to produce a sufficient level of income for future beneficiaries

In this way, trustees can aim to ensure that their investment portfolio will enable them to further the charity's aims both now and in the future.

## **8.4 Can a permanently endowed charity adopt a total return approach to investment?**

### **The short answer (legal requirement)**

Yes. The Charities Act 2011 gives trustees the power to adopt this approach by resolution and [The charities \(total return\) regulations 2013](#) and the [guidance](#) set out how trustees can exercise and use the power.

Charities that do not have permanent endowment can adopt a total return approach without the commission's consent.

### **In more detail**

Total return describes an investment approach that charities can adopt to manage their investments. Under this approach, the form in which investment return is received (for example, income, dividend or capital growth) does not matter. Instead, investments are managed to make the most of the total investment return they generate.

A total return approach can give charities greater flexibility in achieving their investment objectives. This is because the focus is on investments that are expected to give the best performance in terms of their overall return, rather than on investments which will give the 'right' balance between capital growth and income (see [8.3](#)).

The trustees can allocate whatever portion of the total return they consider appropriate as income - this can be spent in furthering the aims of the charity. The balance remaining is carried forward as unapplied total return and invested as capital.

The Charities Act 2011 allows trustees of permanently endowed charities to adopt a total approach to investment by their resolution, and the commission has made regulations and issued guidance setting out how this power can be exercised and operated. The regulations also allow trustees some additional flexibilities in the way they use a total return approach which must be exercised in the interests of their charity.

For more information on this subject, see [Total return investment for permanently endowed charities](#).

## 8.5 Can a charity make a financial investment in a subsidiary trading company?

### The short answer (legal requirement)

Yes, but the trustees must be able to justify financial support for the subsidiary trading company as a suitable way of investing the charity's resources.

Charities sometimes set up a subsidiary trading company to carry out their aims, rather than to generate income. This is not dealt with in this guidance - for further information see [Trustees, trading and tax \(CC35\)](#)

### In more detail

Trustees must use the usual criteria (see [3.2](#)) to assess whether an investment in a subsidiary trading company would be appropriate for the charity. They must:

- consider whether it is in the charity's interests to make an investment in a subsidiary trading company after making a fair comparison of this form of investment with other forms of investment available; this should involve an objective assessment of the company's business prospects (the suitability of the investment type or class)
- be satisfied that the particular company is financially viable based on its business plan, cash flow forecasts, profit projections, risk analysis and other available information (the suitability of the investment within that asset type or class)
- take appropriate advice on the investment and the financial viability of the subsidiary trading company; what is 'appropriate' will depend on the circumstances - the cost of taking the advice is a relevant factor, and should be proportionate to the size of the proposed investment (considering and taking advice if appropriate)
- decide the nature of the investment in the subsidiary trading company, taking professional advice as needed (the trustees' duty of care)
- consider from time to time whether the investment in the subsidiary trading company should be retained (the review and diversification of investments)

Trustees should also:

- take account of the length of time over which funds may be tied up in an investment in a subsidiary trading company, since funds invested in this way may not be easily realised if they are needed in the short to medium term
- consider, and take suitable advice on, the possibility of obtaining funding from another source as an alternative to funding by the charity

Investing in a company which is not economically viable, and has no real prospect of becoming so, would not satisfy the criteria listed above. This would be the case where the investment is to be used to pay the debts of an insolvent company before it goes into liquidation, solely to prevent it having to be treated as an insolvent company.

Sometimes a subsidiary trading company can be set up to further both the charity's aims and to generate a financial return. It is important that trustees are able to justify the investment either on the basis of the financial return or the extent to which it furthers its aims. Where the

company is doing both, it is a mixed motive investment and the criteria set out in [section 11](#) apply.

## **Tax treatment**

Trustees should be aware that there may be tax implications for investments in, and loans to subsidiary trading companies which are made by a charity where the subsidiary trading company is connected to the charity. Charities are unlikely to encounter difficulties where investment in the subsidiary is undertaken to generate funds that are then used by the charity to deliver its charitable aims. Investments and loans that are made to prop up an ailing connected trading company may not be considered to be made for the benefit of the charity and may impact on the charity's tax exemptions.

HMRC are likely to look critically at a charity's investments in trading companies where the charity appears to be little more than an adjunct tacked onto a business as opposed to the company being there to raise funds for the charity.

It is important to ensure that any investment by a charity in a subsidiary trading company is not treated as non-charitable expenditure. If it is so treated, there may be tax liabilities.

For more information:

- on investment in trading subsidiaries, see [Trustees, trading and tax \(CC35\)](#)
- on tax issues, see [HMRC charities webpage](#)

## **8.6 Can a charity make a financial investment in companies in which the charity trustees, or people connected with them, have private interests?**

### **The short answer (legal requirement)**

Yes, but trustees must be able to justify the investment as appropriate for the charity and that the charity has the necessary power to make it.

### **In more detail**

Trustees must be careful not to become committed to supporting a company in which trustees, or people connected with them, have a private interest without giving full consideration to whether:

- the investment is appropriate for the charity and in line with its investment policy
- any conflict of interest issues have been identified and managed
- any private benefit is acceptable - in this guidance, private benefit means any benefits that a person or organisation receives from a charity other than as a beneficiary

Trustees must use the usual criteria (see [3.2](#)) to assess whether an investment in a company in which trustees, or people connected with them, have a private interest would be appropriate for the charity. They must:

- consider whether it is in the charity's interests to make the investment after making a fair comparison of this form of investment with other forms of investment available;

this should involve an objective assessment of the company's business prospects (the suitability of the investment type or class)

- be satisfied that the company is financially viable based on its business plan, cash flow forecasts, profit projections, risk analysis and other available information (the suitability of the investment within that type or class)
- consider taking appropriate advice on the investment and the financial viability of the company; what is appropriate will depend on the circumstances - the cost of taking the advice is a relevant factor, and that should be proportionate to the size of the proposed investment (considering and taking advice if appropriate)
- consider from time to time whether or not an existing investment should be retained (the review and diversification of investments)

For more information on managing conflicts of interest, see [Manage a conflict of interest in your charity](#).

### **Tax treatment**

Trustees should be aware that there may be tax implications for investments made by a charity in a company connected with its trustees, or in which they or their associates have a significant personal interest. HMRC will have to consider whether the investments are made for the benefit of the charity and not for the avoidance of tax. Investing in a company connected with significant donors, including trustees, may also be subject to the substantial donors rules and may impact on the charity's tax exemptions. Investments may be subject to the tainted charity donations rules introduced in 2011. While these rules primarily affect the donor, they can impose a tax charge on charities as well in some circumstances. Making the investments for other purposes may have tax consequences.

For more information, see [HMRC charities webpage](#)

## **8.7 Can a charity make a financial investment in outcomes-based finance?**

### **The short answer**

Yes, it's possible that this type of investment could be viewed as a financial investment if the likely financial return justifies it. Charities will need to take advice where appropriate on this.

### **In more detail**

Investors in outcomes-based finance structures receive a financial return that is fully or partially linked to the social and/or environmental outcomes generated by the services delivered using the investment. A social impact bond is an example and describes a contract which is typically between a public sector body and investors where the former commits to pay for an improved social outcome. Investor funds are used to pay for a range of interventions to improve the social outcome.

Alternatively, charities might approach this as a programme related investment - see [section 10](#) - or as a mixed motive investment ([section 11](#)).

## **8.8 Can a charity keep gifts of financial investments?**

### **The short answer (legal requirement)**

Yes, providing the trustees consider it is in line with their investment duties. For example, they must consider:

- how suitable the investment is
- the need to diversify investments

### **In more detail**

Tax legislation offers incentives to donors who give investments, including land, to charity. It is up to trustees to decide whether to sell or keep the investment. In doing so, they must ask:

- Are the investments donated suitable for the charity?
- Is there a need for further diversification within the charity's overall investment portfolio?
- Is there a need for further diversification within the donated investments?

There are also other questions that trustees may want to ask such as:

- Would selling part, or all, of the gift discourage donors from making further gifts to the charity?
- How practical would it be to change the donated investments?
- Would the true value of the investments be realised on a disposal, or would this only be achieved by holding onto the investments for a longer period?

If the charity has accepted the gift of an investment with the condition attached that the donor must consent to any change in that investment, donors should not withhold their consent because it suits their own personal interests to do so, but should act in the interests of the charity.

### **Tax considerations**

Trustees should be aware that there have been some cases where the reliefs for giving investments have been subject to misuse as part of tax avoidance schemes. In these schemes, the investments given typically conveyed little benefit to the charity or the charity received a very small return for allowing itself to be used as a conduit through which valuable investments were passed. Charities should avoid becoming involved in such arrangements. In certain circumstances, the tainted charity donations rules might impose a tax charge where the donation in question is made under Gift Aid.

Complicity in tax avoidance could amount to a breach of trust or a non-charitable activity. If trustees of a charity are concerned that an investment or investments have been given to them as part of tax avoidance arrangements they should consider informing HMRC.

For more information, see [HMRC charities website](#)

## **8.9 Can a charity engage in stakeholder activism?**

### **The short answer**

Yes. A charity as a stakeholder can engage with an organisation that it has an interest in or whose activities might affect its work on a number of levels. It can ask it for information or express views, or it can exercise any voting rights in order to influence an organisation's policies in a way that better reflects its own values and ethos.

Stakeholder activism can also be used for the purpose of engaging with the corporate governance of the companies in which the charity invests. This is in order to safeguard its investment and to ensure that the companies it invests in are being managed for the long term benefit of shareholders. It can also be used for the purposes of programme related investment ([section 10](#)) or mixed motive investment ([section 11](#)).

Charities may ask their investment manager to vote on their behalf.

### **In more detail**

A charity as a stakeholder in a particular business may wish to exercise its voting rights in order to influence a company's policies in a way that reflect its own particular values and ethos.

Where a charity chooses to engage directly in shareholder activism, there are some important points for it to consider:

- shareholder activism needs to be related to its aims, and the charity needs to consider and manage any risk of significant financial detriment
- when exercising a vote as a shareholder, all points of view should be considered - specifically, the potential effect on the value of the charity's investment
- stakeholder activism is more effective if it is carried out with other stakeholders
- any time and resources spent on stakeholder activism should be proportionate to the benefit to the charity

In some circumstances, a charity may wish to acquire investments that are related to its values and ethos primarily to engage in stakeholder activism.

Where a charity has delegated voting responsibilities to its (discretionary) investment manager, the charity should ensure that it is aware of the philosophy and processes behind its investment manager's voting policy. The charity is likely to want regular reports on how its shares have been voted.

Investment managers should vote and engage with the company management as a matter of course. However, they will generally be voting with long term financial outcomes in mind, in other words seeking the best long term financial return for the charity. They should provide the charity with their corporate governance statement and regular reporting of their engagement activity. Some investment managers have stakeholder activism policies that can be followed on behalf of many clients, achieving a greater effect with economy of effort.

## **9. Cash deposits**

### **9.1 What should trustees consider when investing in savings and cash deposits?**

## **The short answer (legal requirement)**

Savings and cash deposits are forms of investment and the legal requirements set out in [section 3.2](#) apply. Cash deposited in a bank or building society normally earns interest which can be used by the charity to generate income until it is either needed to spend on the charity's aims or placed in longer term investments.

There are a number of other ways of investing cash, particularly for larger charities, and charities should take advice where appropriate. They should identify and plan for the management of any risks attached to the investment of cash.

## **In more detail**

Cash needed for the day to day running of the charity is usually held in an instant access current or deposit account. Charities wishing to lock away cash for longer periods of time, for example to fund a project at a defined point in the future, can deposit cash in a fixed term or notice account, which can offer higher rates of interest, but will usually have restrictions on access to funds.

In complying with their duties (set out in [section 3.2](#)), trustees should:

- **Have a short written policy:**

This should cover where and how long cash may be deposited and the maximum amount to be placed in one institution. If necessary, the statement should cover the policy for short, medium and long term deposits.

- **Consider thoroughly which institution to invest with:**

Cash should only be deposited with reputable institutions, such as those authorised by the FSA in the UK or by the relevant financial regulator in any other country.

- **Investigate the benefits offered by a particular deposit account:**

Cash deposits should be in an interest bearing account, unless trustees plan to use the money on deposit in the short term or invest it elsewhere for the longer term. Trustees should consider:

- the rates of interest on offer; interest rates vary across institutions and on particular accounts over time - charities should regularly review accounts to ensure they are getting competitive rates, rather than constantly seeking the highest rate, trustees may prefer to deposit cash in an institution that has consistently good interest rates
- the timing of interest payments, for example, whether they are monthly or annual
- the conditions of access to funds, including any charges or penalties arising from access at short notice or early termination
- whether interest is paid gross or net of tax
- the charity's ethical stance

Non financial considerations, such as the location of the institution, are important but only secondary to those listed above.

- **Investigate what protection there is for deposits:**

Charities should seek assurance that institutions are protected wherever possible and trustees should be fully comfortable with the protection arrangements before depositing money with that institution, whether in the UK or abroad. For further information, see:

- the [FSCS](#) website
- **Limit the amount deposited in any one institution:**

Trustees should balance the benefit of getting a higher rate of interest for depositing a single large sum against the risks involved with depositing with a single institution. Charities depositing large amounts should consider establishing a policy for the maximum amount to be placed with any one institution in order to reduce the risk of lost deposits. By splitting large deposits between banking institutions, trustees reduce the risk of large losses due to institutional failure.

- **Get professional advice where appropriate:**

Charities must take advice from someone experienced in investment matters where they consider they need it.

- **Ensure all deposits are properly authorised:**

The opening or closing of bank accounts should be authorised by the whole trustee body, but can be delegated where appropriate subject to reasonable limits. The commission recommends that all subsequent deposits of funds should be authorised by at least 2 authorised individuals. For most charities, these individuals should be trustees. Subject to restrictions imposed by the charity's governing document, trustees are recommended to appoint more than 2 signatories, so that 2 can always be available if necessary. All trustees share responsibility for ensuring that proper and appropriate steps are taken to protect the investment before arranging for deposit of the charity's money.

- **Recovery of tax:**

There are many deposit accounts available, and some designed specifically for charities, which pay interest gross of tax. If, however, the account preferred by trustees pays interest on the charity's deposit net of tax, then trustees should ensure they are able to reclaim the tax.

- **Consider whether Common Deposit Funds would be appropriate:**

Common Deposit Funds (CDFs) are deposit taking schemes that are tax efficient, administratively simple and cost efficient. They do not fall within the Financial Services Compensation Scheme. They enjoy the same tax status as other charities. CDFs accept deposits from depositing charities and place the money they have accepted on deposit in the money market. By pooling funds (usually for relatively short duration) on deposit, CDFs can secure a higher rate of interest for the depositing charities than each charity would otherwise get, if undertaken separately.

For more information, see [Common Deposit Funds - a basic guide to their regulation](#)

- **Review arrangements regularly:**

Trustees should regularly review their cash management arrangements and the costs and benefits of their charity's cash accounts to ensure their deposits are protected and that charges and rates of interest are competitive.

## **10. Programme related investment (PRI)**

### **10.1 What is PRI?**

The Charities (Protection and Social Investment) Act 2016 has introduced a statutory power for charities to make social investments. The commission's [interim guidance](#) outlines the considerations for trustees when making social investment decisions. It will be reviewed in 2017.

**Other than the addition of this interim guidance and the removal of the definition of social investment from Annex 1, the substance of this guidance has not been changed. The existence of the power and its practical application for charities will be one of the issues the commission will consider as part of a future review of its investment guidance.**

#### **The short answer**

PRI allows a charity to directly further its aims and, at the same time, potentially achieve a financial return. In making a PRI, trustees are not bound by the legal framework for financial investment (see [3.2](#)), because their decision is about applying assets directly in furtherance of the charity's aims.

#### **In more detail**

PRI uses charitable resources to finance charitable and other organisations in a way that:

- is wholly in furtherance of the charity's stated aims
- is for public rather than private benefit
- is expected to produce some financial return for the charity (but this is not the main reason for doing it)

#### **Example**

A charity that works to relieve poverty may give a loan to another charity that helps unemployed people back into work.

This will:

- relieve poverty (wholly in furtherance of the charity's aims)
- be for the public benefit
- be expected to achieve repayment of the loan and a financial return from interest payments on the loan

Successful PRI can enable charities to:

- increase the help they can provide; if the investment is recouped and/or yields a return for the charity, then the resources can be reused to support a greater number of projects
- employ a wider range of funding methods; for example, sometimes loans and equity are better suited to particular projects than grants
- make a long term, flexible investment that directly furthers the charity's aims ie at low interest rates, interest free or involving repayment (partly) through in-kind services
- improve the terms on which charities are offered finance, enabling finance to be accessed at a lower cost

### **The difference between financial investments, PRI and grants**

A PRI is different from a financial investment or a grant although it may look similar in form.

The difference between a financial investment and a PRI lies in the primary intention of the investment. The main reason for making a PRI is to further the charity's aims, not to generate a financial return. The main reason for making a financial investment is to generate a return which can then be used to further the aims of the charity. Usually the charity will be seeking the best financial return on their investments within the level of risk they consider appropriate for the charity. The intention is important because it allows trustees to show how they are acting in the interests of the charity.

PRI also differs from grant making because a grant is made to further the charity's aims with no expectation of a financial return. However, some charities might choose to make a grant alongside a PRI, for example to help build an organisation's management capacity thus helping to ensure loan repayment.

Financial investment targeting the best rate of financial return given the level of risk considered appropriate	PRI furthering a charity's aims, with the expectation of some financial return	Grants directly furthering a charity's aims
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## **10.2 What form can a PRI take?**

### **The short answer**

PRIs can take a wide range of forms and can be made to both charities and other types of organisation. They can range from:

- relatively small sums of money provided as loans to another organisation or individual, for example a housing deposit, buying new equipment or renovating a property to
- large sums invested in complex high profile projects, for example regeneration projects

### **In more detail**

PRIs often take the form of loans, equity investments or pooled funds more commonly associated with financial investment. PRIs may also be made through intermediaries.

Common examples include:

## **Loans**

The key characteristic of a loan is that the borrower should repay the amount of the loan with or without interest.

If making a loan, a charity should ensure that the terms of the loan set out:

- how it will be used to further the charity's aims
- a rate of interest; trustees should consider the impact on their charitable aims and the rate that the borrower might be able and willing to pay
- the timescale and terms of repayment; trustees can be flexible in considering these arrangements

A charity can also guarantee loans on behalf of organisations or individuals that will further the charity's aims. With loan guarantees, trustees are promising a third party that they are responsible for the obligations of the recipient should it not be able to meet those obligations. The trustees should ensure that they have, or can access, sufficient resources to meet any call under the guarantee. In the meantime they retain use of their organisation's funds.

## **Equity investments**

Exceptionally, PRI can take the form of an equity investment where a charity buys shares in a company and provides it with start up capital. Ownership usually gives a right to a dividend if paid and a right to vote at the annual general meeting. However trustees should be aware that there are particular risks involved. They will need to consider what processes can be put in place to ensure the funding will continue to be used to further the aims of the charity. For example this could take the form of shareholder agreements, buy back positions and convertible loan stock.

For more information on equity investments in non charitable companies, see [10.9](#).

Charities can also engage in the following:

## **Revenue participation or quasi-equity**

This means that the charity as an investor gets a financial return based on the share of revenue/profits made by an organisation in return for providing capital for the development of a particular initiative. The initiative must be in furtherance of the charity's aims in order for this to be a PRI. The return the investor receives is linked to the financial success of the venture. Investments of this kind do not involve the issue of shares and do not generally confer ownership on the investor.

## **Outcomes-based finance**

Investors in outcomes-based finance structures receive a financial return that is fully or partially linked to the social and/or environmental outcomes generated by the services delivered using the investment. A social impact bond is an example, and describes a contract which is typically between a public sector body and investors where the former commits to

pay for an improved social outcome. Investor funds are used to pay for a range of interventions to improve the social outcome. The social and/or environmental outcomes must be in furtherance of the charity's aims in order for this to be a PRI.

It's possible that this type of investment could be viewed as a financial investment if the likely financial return justifies it. It could also be made as a mixed motive investment. Charities will need to take advice where appropriate on this.

### **10.3 What is the trustees' role when making a PRI?**

#### **The short answer**

When making a PRI, trustees must act in the best interests of their charity and ensure that:

- their charity's funds are only used to further its stated aims
- any private benefit arising from the investment is necessary, reasonable and in the interests of the charity (see [10.8](#))

Before making a PRI, they should:

- be clear that it contributes to the charity's strategic aims
- compare PRIs with other ways of advancing the charity's aims in terms of effectiveness and risk
- consider whether they need to take advice, given the level of risk to the charity, and any knowledge or expertise that they have in the charity

Trustees are unlikely to be criticised for their decisions if they have considered the relevant issues, taken advice where appropriate and reached a reasonable decision. The PRI checklist at [annex 2](#) is intended to guide trustees through the decision making process.

#### **In more detail**

The trustees have overall responsibility for PRI decisions. They should put in place the appropriate governance arrangements for managing their PRIs. The governance structure and level of delegation will be different for each charity depending on its internal resources and expertise and they should consider the following points:

- trustees do not need to have specialist project and financial knowledge themselves; however charities with significant funds invested may find it helpful to have a trustee with specialist financial and project knowledge on its board, or co-opted to its board
- charities with substantial sums invested in PRIs or that have invested in complex or high profile PRIs may find it helpful to establish an internal PRI committee or a sub committee of trustees or staff to advise the board on the more detailed aspects of PRIs
- trustees may delegate decisions about individual PRIs to a third party or to staff within the charity if they have the power to do so in their governing document, however, they will need to:
  - ensure that they provide a clear direction, in writing, about the nature and type of PRIs they consider will further the charity's aims
  - ensure they have procedures in place for monitoring and reviewing PRI performance

## **10.4 What risks should trustees consider in connection with PRI?**

Trustees should consider the following risks and make decisions for their management appropriate to the size and activities of their charity and proportionate to the scale of the PRI in relation to the activities of the charity:

- Will the PRI be used to fund aims other than those intended, for example if the recipient made a significant change to its activities or if the objectives of the PRI are achieved earlier than expected?
- Will there be an unacceptable level of private benefit to the recipient or other investors (see [10.8](#))?
- Are there risks to the charity's reputation, for example arising from private benefit?
- What will happen if the project is not successful?
- What will happen if the charity is dependent on a financial return that is then not recouped?
- What if real return levels are lower than expected because of changes in inflation or exchange rates?

## **10.5 Should trustees take advice when making PRIs?**

### **The short answer**

There is no legal obligation to take advice. Much will depend on whether the trustees feel comfortable and competent enough to make decisions on PRIs.

### **In more detail**

The issues that might influence the need for advice are:

- the size and scale of the PRI and level of risk involved
- the complexity of the legal and financial issues
- whether a particular professional evaluation is called for

and whether the charity has in house expertise in:

- assessing projects
- undertaking due diligence checks
- determining appropriate levels of return
- assessing viability prospects

## **10.6 Can a charity make a PRI in a project that falls outside its charitable aims?**

### **The short answer (legal requirement)**

No, a charity can only make a PRI that supports its charitable aims. However, trustees can explore new and innovative ways of using PRIs to further their aims bearing in mind the principles set out in this guidance.

## **In more detail**

It is important that trustees understand the full scope of their charity's aims and can demonstrate how the intended outcomes of the PRI will further these.

Some large charities, often trusts and foundations or charitable intermediaries providing financial support to other charities, have been set up with general charitable aims and will therefore be able to make a wide range of PRIs from their income and expendable endowment that support any charitable purpose they select.

## **10.7 What if the PRI ceases to further the charity's aims?**

### **The short answer**

Charities should consider at the outset how they would manage situations where the PRI funded activities cease to further its aims. The terms of the PRI agreement should reflect what is possible and practical to end the PRI and, if feasible, the return of funding which can no longer be used to further the charity's aims.

## **In more detail**

### **Loans**

Where the PRI takes the form of a loan directly from the charity to the organisation it is funding, the agreement may include a condition requiring repayment of the loan or the conversion of the loan to commercial terms in the event that the investment is no longer being used to further the charity's aims.

### **Equity investments**

The position is more complicated where the PRI takes the form of equity investments because of the requirements of company law concerning the reduction of the capital of companies. However, it is possible to put other arrangements in place. For example, a company might agree conditionally to purchase its own shares, or to issue shares which are redeemable in such circumstances.

### **Intermediaries**

Where the PRI is made through an intermediary, the furtherance of the charity's aims may be complicated by the intermediary's relationship with the ultimate recipient. While the principle that the PRI needs to wholly further the charity's aims remains, the trustees should take into account that practical considerations may limit the intermediary's ability to agree how to end an arrangement with its charitable investors.

### **Risk management**

The charity will need to consider, when the investment is first proposed, the risk that the charity might find itself locked into a PRI which has lost any connection with its aims. Trustees may decide that, where the risk is small, the benefit to be obtained by making the investment justifies taking that risk. However, where the amount invested represents a

significant part of the charity's resources, the risk becomes greater and will be more difficult for the trustees to justify taking.

## **10.8 When is some private benefit acceptable?**

### **The short answer**

Some private benefit flowing to other investors is acceptable if the trustees are satisfied that the private benefit is:

- necessary in the circumstances
- reasonable in amount
- in the interests of the charity

Trustees must have regard to the guidance on private benefit in [Charities and public benefit](#) when making PRIs.

### **In more detail**

A charity's aims must be for the public benefit. However, sometimes, the best way for a charity to help its beneficiaries may result in individuals or businesses making a private benefit. Where there is an unacceptable level of private benefit it can affect charitable status.

Trustees will need to use their judgment to determine whether the private benefit is acceptable. They must always act in the best interests of the charity. They can include the charity's enhanced ability to further its aims (as a repaid loan can be lent to others) in their assessment of the project's public benefit. In some cases the assessment required will be relatively simple, in others it will be complex, based on multiple factors, and the decision will be finely balanced. Trustees should make decisions based on what is reasonably known at the time of making the PRI and ensure they have a record of their decisions.

Where trustees consider that individuals or businesses are making a private return in PRI which is beyond what they consider as necessary, reasonable and in the interests of the charity, they should ensure that the private benefit is recoverable by the charity by some other means. For instance, the person receiving the private benefit may choose to pay it to the charity. If there is continuing unacceptable private benefit, the charity should consider its options for exiting the PRI.

## **10.9 What are the duties of trustees if investing in the equity capital of a non-charitable company in order to further the charity's aims?**

Legal requirement: in general, investing in the equity of a private company will mean a financial return for the shareholders or will further some other non charitable purposes of the company. This will usually mean that the charity's investment is not supporting wholly charitable aims and, therefore, a charity can only make a PRI in such a company in exceptional circumstances. These circumstances are only likely to arise where there is a clear correlation between the social purposes that the company will achieve and the aims of the charity.

Therefore, the trustees must satisfy themselves that:

- there is correlation between the charity's aims and the social mission of the non-charitable organisation in which the trustees wish to invest
- any private benefit derived from the PRI is necessary, reasonable and in the interests of the charity
- any private benefit will not be excessive and the investment is clearly for the public benefit

Where there is potential for considerable economic gain by the company, the trustees should take all reasonable steps to ensure that the charity benefits from this gain. Otherwise, they could not demonstrate that any private benefit is necessary, reasonable and in the interests of the charity. There should be adequate safeguards in place to ensure that any unacceptable private benefit does not arise. For further information see [Legal underpinning: charities and investment matters \(section 5\)](#).

## **Example**

### **Equity investment in a commercial organisation**

A charity set up to help people with disabilities find employment might be interested in buying newly issued shares in a commercial organisation run by and employing disabled people. The success of the company will deliver benefits to shareholders. The more successful the company, the more disabled people it is able to employ and train.

### **Points to consider**

- The key question here is the match between the charity's aims and the general activities of the non-charitable organisation. Trustees must ensure that when providing general loans or buying shares in a commercial organisation, the general activities of the commercial organisation should directly further the charity's aims.
- Trustees should also carefully consider at the outset how they would manage a situation where the commercial organisation changes its activity or employment policy. In particular, they should ensure they would be able to exit from the PRI in such circumstances.
- Trustees would need to be satisfied that the private benefits (including to shareholders) are acceptable.

## **Example**

### **A loan to a commercial organisation for a specific aim.**

A commercial organisation providing vocational training requests a loan to enable it to provide training facilities for the unemployed in a disadvantaged area. These new facilities will enable the company to train fifty local unemployed people each year under a local authority contract.

A local charity set up to relieve unemployment considers making the loan on the basis that it furthers its charitable aims. The contract offered by the local authority enables the commercial organisation to cover costs and make a small profit margin. However, this margin is not sufficient to support a loan at market rates.

The commercial organisation needs this loan to develop and equip training premises. It could not operate in the disadvantaged area without the charity's loan which is offered at below market rates. The loan provided by the charity may make an indirect contribution to the company's profitability because it may, for example, win more contracts of this kind with larger margins.

### **Points to consider**

- This sort of evidence of market failure to deliver employment, goods or services to disadvantaged people is sometimes the basis for justifying PRI in non-charitable organisations.
- Trustees have a duty to use their charitable assets to further the charity's aims. The loan should be made on the basis that it will be used by the commercial organisation only to carry out activity that will directly further the charity's aims. The loan could not be used to fund any other activity. Trustees would need to be satisfied that the private benefit is necessary, reasonable and in the interests of the charity.
- The terms agreed should allow for the loan to be repaid in full should the commercial organisation cease to carry out those specific activities.

## **10.10 Can a charity invest in and through intermediaries?**

### **The short answer**

Yes. If investing in and through intermediaries, trustees need to be assured that:

- the charity's funds are only used to further the charity's stated aims
- any private benefit arising from the investment is acceptable

### **In more detail**

Some charities and non-charitable organisations specialise in PRI and act as intermediaries. They finance, or facilitate the financing of, other charities and non-charitable businesses. This approach can:

- reduce the transaction costs associated with loans or the purchase of equity
- sometimes provide expertise in assessing and managing the financial risks associated with the projects they support
- provide knowledge about the communities and markets in which they are investing and mitigate risk
- allow charities to pool risk across a large number of investments thus reducing their exposure
- make it easier for charities to recover their investments

### **Examples**

#### **(1) Buying shares in a loan fund**

A charity which aims to protect the environment by supporting the development of renewable energy sources might invest in a loan fund set up to finance new green technologies. Given

that the fund can continually make loans, the investment by the charity will have a considerable impact on the number of new green technologies supported.

### **Points to consider**

- The PRI can only be made on the basis that it will be used to carry out activity that will directly further the charity's aims.
- The private benefit to those who receive start up funding must be considered to be necessary, reasonable and in the interests of the charity in the circumstances.

## **(2) Investing in a social impact bond**

A social impact bond typically describes a contract between a public sector body and investors where the former commits to pay for an improved social outcome. Investor funds are used to pay for a range of interventions to improve the social outcome.

A charity that works to help the unemployed back to work might invest in a social impact bond that funds a project or multiple projects that aim to improve an individual's chances of finding work. This could be a direct investment in the project or be managed through an intermediary. Upon completion of the project, if the targets set out are met, then the charity will recoup its investment and receive a return. (Some charities may choose to make this type of investment as a financial investment).

### **Points to consider**

- the PRI can only be made on the basis that it will be used only to carry out activities that aim to help the unemployed back to work
- any private benefit must be deemed to be necessary, reasonable and in the interests of the charity in the circumstances

## **10.11 Can charities use their permanent endowment to make PRIs?**

### **The short answer (legal requirement)**

In general, permanent endowment involves funds held on trust to be invested to provide a financial income which can be spent on furthering the charity's aims. This will not usually permit permanently endowed funds to be used for PRI.

### **In more detail**

A charity might be able to use its permanent endowment for a PRI by:

#### **Using the income**

A charity can use part or all of the income from the permanent endowment to make a PRI.

#### **Justifying it as a financial investment**

A PRI is one where the financial return is not the primary reason for making the investment. Trustees can use permanent endowment held on trust for financial investment if the risk profile and financial return sought enable it to be justified as an investment.

Trustees can take account of ethical investment considerations or make mission connected investment when investing permanent endowment.

There may be some occasions when an investment generating less than a market return might be justified because of the extent to which the investment furthers the charity's aims. In this case, the justification has to show that the extent to which the charity's aims are furthered is roughly equivalent to the reduction of income. This is one type of mixed motive investment (see [section 11](#)).

### **Adopting a total return approach**

Trustees managing permanent endowment can consider adopting a total return approach. This means that part of the capital growth on the endowment can be allocated to their income fund and spent on the charity's aims. This can be spent on the PRI. A permanently endowed charity that want is to adopt a total return approach to investment may use the power in the Charities Act 2011 and the [Charities \(total return\) regulations 2013](#) to adopt a power to adopt the approach.

### **Removing restrictions on permanent endowment**

Trustees may be able to remove the restrictions from some or all of any permanent endowment their charity holds. They can do this if they decide that it will allow them to carry out the charity's aims more effectively.

The trustees will need to pass a formal resolution that the restrictions on the permanent endowment should be removed from all or part of the fund concerned. If the market value of the permanent endowment is over £10,000, they may also need the commission's approval. This would enable trustees to use the capital in any PRI scheme that furthered the aims of the charity concerned.

Further information on permanent endowment is set out in [Permanent endowment: what is it and when can it be spent?](#)

## **10.12 How should PRI be reported in the trustees' annual report and a charity's annual accounts?**

Legal requirement: where the trustees must prepare an annual report and are subject to statutory audit, the report must include an explanation of the charity's policy for making a PRI and how any material PRI has performed against the objectives set for it.

In the annual accounts, the balance sheet must show investments held primarily to provide a financial return for the charity (financial investments) and PRI separately. PRI should generally be included at the amount invested less any impairment and, in the case of loans, any amounts repaid. Impairments should be charged as an expense of charitable activities in the Statement of Financial Activities. Where a gain is made on the disposal of a PRI then it should either be set off against any previous impairment loss or included as a gain on disposal

of fixed assets for the charity's own use and recorded under 'other operating resources' in the SoFA.

For more information, see [Accounting and reporting by charities, SORP 2005](#)

### **10.13 How can a charity account for a PRI that no longer fulfils the charity's aims?**

If a PRI no longer furthers a charity's aims or the trustees' motive for holding the investment changes so that it is held primarily for a financial return, then it will be necessary re-classify the investment as a financial investment in the charity's balance sheet.

One of the key characteristics of a PRI is the expectation of repayment and/or a financial return for the charity, although the primary aim of a PRI is to further the aims of the charity. Therefore a PRI is an asset but one which, like any other asset, can reduce in value. If the PRI is no longer worth what it is valued at in the balance sheet, it should be included at its recoverable amount. Alternatively, provided the aims of the charity are still furthered by the investment, the charity may choose to convert the PRI into a grant.

### **10.14 How should trustees monitor and review a PRI?**

Trustees will need to review their charity's PRIs regularly. The approach to, and frequency of, this review will depend on the nature and size of the charity's PRIs and on its need for resources which may change over time. Trustees will need to consider:

- the use which the recipient makes of the resources the charity has provided to ensure that they are being used to further the aims of the charity
- emerging methods of impact reporting or 'social return on investment' to measure, manage and communicate how the PRI furthers the charity's aims
- the likelihood of repayment and/or return on the PRI; this will vary depending on the form of the PRI - for example, for loans and equity investments this may involve ongoing reports on the progress of the project with regular assessment of the prospects of loan recovery and financial returns, the relevant terms should be built into any funding agreement

### **10.15 What are the tax implications of PRI?**

Legal requirement: there may be tax implications for PRI which depend on the structuring of the investment and the tax treatment of any return - charities should be aware of this and take advice where appropriate. As long as charities apply the income and gains arising from a PRI charitably they will normally be exempt from UK tax.

Charities risk losing their tax exemptions if they incur non-charitable expenditure. This can include making investments or loans that are not 'approved charitable' investments or loans. Some categories of loans and investments are automatically treated as 'approved charitable' loans and investments. HMRC will consider claims for other loans and investments to be treated as 'approved charitable' as long as they are made for the benefit of the charity and not for the avoidance of tax. HMRC will normally accept claims for PRIs to be treated as 'approved charitable investments'.

For more information see the [HMRC charities website](#)

## 11. Mixed motive investments

**The Charities (Protection and Social Investment) Act 2016 has introduced a statutory power for charities to make social investments. The commission's [interim guidance](#) outlines the considerations for trustees when making social investment decisions. It will be reviewed in 2017.**

**Other than the addition of this interim guidance and the removal of the definition of social investment from Annex 1, the substance of this guidance has not been changed. The existence of the power and its practical application for charities will be one of the issues the commission will consider as part of a future review of its investment guidance.**

The previous sections have concentrated on 2 different forms of investment - financial and programme related. However, some new and developing investment opportunities do not fall entirely within just one or the other of these categories, but can still be justified as being in the interests of the charity. The commission refers to these as mixed motive investments.

The commission recognises that this new approach to investment could be an appropriate way for some charities to respond to the changing environment in which they work. The commission intends this basic legal and good practice framework to help charities consider whether mixed motive investments might be an option for them and to describe the decisions involved.

### 11.1 What is a mixed motive investment?

#### **The short answer (legal requirement)**

A mixed motive investment is one which trustees make on the basis that it has elements of both financial investment and programme related investment. The investment cannot be wholly justified as either one or the other.

#### **In more detail**

Generally, trustees must be able to show that investments they make are in the best interests of the charity. They do this by justifying them as either:

- financial investment - seeking the best financial return given the level of risk considered to be appropriate or
- programme related investment (PRI) - furthering the charity's aims directly in a way that might generate a financial return

Separate legal requirements apply to both.

However, sometimes trustees will want to invest in a way that they consider to be in the best interests of their charity but not entirely justified on just one of these grounds alone. In this situation, they may be able to justify the investment as a mixed motive investment if they are satisfied that:

- the investment can be justified by the dual nature of the return - part financial and part justified by the investment's contribution to the charity's aims
- there is no other reason for making the investment, including:
  - creating unauthorised private benefit to some or all of the trustees or people connected with them
  - creating unacceptable private benefit to other individuals

As mixed motive investments are a developing area, professional advice may be required on specific proposals.

## **11.2 Why might a charity want to make a mixed motive investment?**

Where an investment cannot be wholly justified either as a financial or a PRI, but the trustees still consider that it is likely to be in the best interests of the charity, it may be possible to justify it as a mixed motive investment. However, trustees should bear in mind that:

- they should be satisfied 'before' proceeding that the mixed motive investment can be justified by the combination of the anticipated financial return and the contribution the activities funded will make to the charity's aims
- any private benefit arising from the investment must be appropriate

Sometimes a subsidiary trading company can be set up both to further a charity's aims and to generate a financial return. It is important that trustees are able to justify an investment either on the basis of the financial return or the extent to which it furthers its aims. Where the subsidiary trading company is doing both, it is a mixed motive investment and the criteria set out in this section will also apply.

For permanently endowed charities, there may be some occasions when an investment generating less than a market return might be justified because of the extent to which the investment furthers the charity's aims. In this case, the justification has to show that the extent to which the charity's aims are furthered is roughly equivalent to the reduction of income.

## **11.3 What should the trustees consider when thinking about making a mixed motive investment?**

### **The short answer**

They should carefully think through the justification for a mixed motive investment before it is made and be satisfied that it is in the best interests of the charity. It should also keep a record of the decision and the reason for it.

### **In more detail**

A charity should ask the following questions when considering making a mixed motive investment:

- Will we be considering the extent that the mixed motive investment supports our charitable aims or the financial investment aspect first? Both could be appropriate

ways to approach a mixed motive investment (see [Legal underpinning: charities and investment matters \(section 6\)](#)).

- Do we know how much of our investment can be justified by the PRI's contribution to our aims and how much can be justified by the financial return? This may not be easy to quantify, but to try to do so could be a useful analytical exercise in justifying the total mixed motive investment before it is made.
- How are we proposing to monitor the mixed motive investment?
- Are we satisfied that, taken as a whole, the mixed motive investment can be justified as being in the interests of the charity?
- Will this investment be suitable for our charity looking at its activities and financial position as a whole? This should include consideration of the size of the mixed motive investment in relation to our charity's overall investment portfolio, and our charity's attitude to risk.
- Have we applied the decision making criteria to both financial investment and the PRI?
- Have we considered whether any private benefit arising from the mixed motive investment is acceptable taking into account the contribution the activities funded make to the aims of the charity (see [section 10.8](#))?
- Have we considered the risk of the charity's resources being used for purposes that are inconsistent with charitable status and the law on investing charitable funds?
- Do we need to take professional advice on the proposed investment? We might need advice on:
  - the fit with the charity's overall business plan
  - whether the investment contributes to the charity's aims
  - the legal issues attached to the proposed investment as a whole
  - any tax implications for the charity

#### **11.4 When is a mixed motive investment not justified?**

A mixed motive investment is not justified where:

- it is made for purposes other than furthering the charity's aims and securing a financial return
- one or more of the trustees (or persons connected with them) will derive an unauthorised private benefit
- the level of private benefit to other individuals is not appropriate
- the risks involved do not justify the level of resources to be invested

#### **11.5 How should a charity monitor a mixed motive investment?**

A mixed motive investment should be monitored both as a financial investment and as furthering the charity's aims and different criteria apply to each. In addition, the charity needs to bear in mind that the balance between the 2 elements may change.

Trustees should monitor and review:

- the extent to which their charity's resources are being used to further its aims; trustees may find it helpful to look into and apply emerging methods of reporting on impact or the social return on investment to measure, manage and communicate how the investment furthers the charity's aims

- the expected financial return on the investment and whether it continues to be a suitable one for their charity.

## **11.6 What happens if a mixed motive investment is unsuccessful?**

If an investment falls in value or becomes irrecoverable then there will be a financial loss. However, provided that the trustees have taken and recorded their decisions properly, then they are likely to be able to address questions or challenges about their actions.

## **11.7 How should mixed motive investments be dealt with in a charity's annual accounts and the trustees' annual report?**

### **The short answer (legal requirement)**

The Charities SORP does not currently directly address accounting for recent developments in mixed motive investments which can take many different forms.

### **In more detail**

Where mixed motive investments are material, the trustees should consider their separate disclosure within the balance sheet or within the investment notes to the accounts. The trustees should explain their investment policy in relation to such assets within their annual report and assess their performance.

In so far as the investment seeks a financial return, trustees should consider whether fair value or transaction cost approaches are appropriate to their year end accounting for such assets. As this is an emerging area, the commission anticipates further consideration will be given to accounting issues as practice develops.

For more information about accounting for investments, see [Accounting and reporting by charities, SORP 2005](#) `

## **Annex 1: Technical terms used in this guidance**

The following terms are used throughout this guidance and should be interpreted as having the specific meanings given below.

‘Aims’ and ‘charitable aims’ mean the aims which the charity is set up to achieve. The aims are usually expressed in a charity’s governing document.

‘Asset class’ is the term used to describe a type or category of investments that share similar characteristics, such as equities, cash deposits or bonds.

‘Asset allocation’ is the term used to describe the process of spreading investments among different asset classes, in accordance with the needs of the charity.

‘Charitable company’ means a charity which is a company formed and registered under the Companies Acts.

The 'Charities Act' means the Charities Act 2011.

'Charitable return' means a return that directly furthers the purposes of the charity.

A 'collective investment scheme' is an arrangement that enables a number of investors to 'pool' their assets and have them professionally managed by an independent manager. The wider range of investments in a collective investment scheme can help reduce the risk of any negative effect that one investment can have on the overall performance of the portfolio. 'Unit trusts' and 'common investment funds' are examples of collective investment schemes.

A 'custodian' is someone who, on behalf of the charity, looks after any documents or other evidence of legal title to investments - for example share certificates and title deeds to land. A custodian may also provide other investment related services, such as handling claims for repayments of tax due in respect of investment income. The term 'custodian' is sometimes used to refer to a person who is both a nominee and a custodian. Custodians have no power to make management decisions and must act on the lawful instructions of the trustees.

A 'custodian trustee' is a corporation appointed to have the custody of trust property - it acts as both nominee and custodian. A custodian trustee has no role in the charity's management and must act on the instructions of the charity trustees, unless they are asked to do something that is not allowed by the governing document or by charity law.

'Endowment funds' are the property of a charity (including land, buildings, cash or investments) which the trustees are legally required to invest or to keep and use for the charity's aims. Endowment may be expendable or permanent.

- 'Expendable endowment' is that property which may be invested to produce income. Depending on the conditions attached to it and the nature of the endowment, the trustees will have the power to convert all or part of it into an income fund which can then be spent.
- 'Permanent endowment' is the property of the charity that the trustees cannot spend as income. It must be held permanently, sometimes to be used in furthering the charity's aims, sometimes to produce an income for the charity. Trustees cannot normally spend permanent endowment without the commission's authority. The terms of the endowment may permit assets within the fund to be sold and reinvested, or may provide that some or all of the assets are retained indefinitely (for example, in the form of a particular building).

'Ethical investment' describes a way of making financial investments which takes into account the charity's values and ethos. Trustees must exercise their investment power in the best interests of the charity.

'FSMA' means the Financial Services and Markets Act 2000.

'FSCS' means the Financial Services Compensation Scheme.

The 'general power of investment' means the power of investment which is given to trustees by section 3 of the Trustee Act 2000, taken together with the power to invest in land which is given to trustees by section 8 of that Act. These provisions do not apply to charitable companies.

‘Gift Aid’ is a tax relief for single outright cash gifts made to charity by individuals (including those carrying on a trade) and companies in the UK.

‘Governing document’ means any legal document setting out the charity’s aims and usually, how it is to be administered. It may be a trust deed, constitution, memorandum and articles of association, will, conveyance, Royal charter, commission or court scheme, or any other document which describes the trusts of the charity.

‘Holding trustees’ are individuals who are appointed by the trustees to hold the legal title to a charity’s property. The way they are appointed and any other details relating to their duties and responsibilities will usually be set out in the charity’s governing document - they are not appointed using the powers in the Trustee Act. Holding trustees are often used by unincorporated charities and can be members of the trustee body. They have no management functions and must act on the lawful instruction of the charity trustees.

‘Intermediaries’ finance, or facilitate the financing of other charities and non-charitable businesses.

‘Investment’: In this guidance the commission uses the term investment in its widest sense. By investment the commission means using assets in the best possible way in the interests of the charity in a way which may attract a return.

‘Investment manager’ means an individual or a corporate body appointed by a charity’s trustees to advise and make investment decisions on their behalf. The investment manager will make those decisions in line with the investment policy which the trustees have developed.

‘Liquidity’ refers to the [ability](#) of an [asset](#) to be converted into [cash](#) quickly and with minimum loss of value.

‘Mission’ connected investment describes a way of making financial investments that also help the charity to achieve its aims directly. Trustees must exercise their investment power in the best interests of the charity.

A ‘mixed motive investment’ is one which trustees can justify making on the basis that it combines a financial return as well as a contribution to furthering their charity’s aims.

A ‘nominee’ is one or more individuals or a corporate body appointed by trustees to hold the legal title to the property of a charity on behalf of the charity or its trustees. The nominee’s name will be entered on the share register of any company whose shares are owned by the charity. In the case of land, the nominee’s name is entered in the proprietorship register. Nominees have no power to make management decisions and must act on the lawful instructions of the trustees.

‘Pooling schemes’ are arrangements to facilitate investment management by a charity trustee, or body of charity trustees, with a number of different charities to administer. They are a type of common investment fund.

‘Programme related investment (PRI)’ sometimes referred to as social investment, is an investment made by a charity wholly to further its aims with the potential of receiving a financial return. Different rules apply for PRI and financial investments.

‘Public benefit’ is the legal requirement that every organisation set up for one or more charitable aims must be able to demonstrate that its aims are for the public benefit if it is to be recognised and registered as a charity in England and Wales.

‘Private benefit(s)’: In this guidance private benefit means any benefits that a person or organisation receives other than as a beneficiary of a charity. It does not, therefore, include the sorts of personal benefits people might receive as a beneficiary, such as receiving an education, or medical treatment, or a charitable grant for example.

‘Reserves’ are the resources that a charity has, or can make available, to spend for any or all of the charity’s aims once it has met its commitments and made provision for its other planned expenditure.

‘Restricted funds’ are funds subject to specific trusts that fall within the wider purposes of the charity. Restricted funds may be restricted income funds, which are spent at the discretion of the trustees in furtherance of some particular aspect of the purposes of the charity, or they may be endowment funds where the assets are required to be invested or retained for actual use (for example, a building) rather than spent.

‘Risk’ is used in this guidance to describe the uncertainty surrounding the performance of investments. It also refers to the risk that a firm with which the charity does investment business may default on its contractual obligations. Risk may either enhance or inhibit any area of a charity’s operations.

‘Social enterprise’ is a broad term used to mean a business operating for a social purpose, which reinvests its profits for that social purpose rather than redistributing them. Some social enterprises are also registered charities, but not all.

‘SoFA’ means Statement of Financial Accounting.

‘Taxes Act’ refers collectively to the tax legislation concerned with Income Tax, Corporation Tax & Capital Gains Tax.

‘Trustees’ means charity trustees. Charity trustees are the individuals or corporate bodies who, under the charity’s governing document, are responsible for the general control and management of the administration of the charity. In the charity’s governing document they may be called trustees, managing trustees, committee members, governors, council members or directors, or they may be referred to by some other title.

The ‘Trustee Act’ means the Trustee Act 2000.

‘Unincorporated charity’ means a charity that is not:

- formed and registered as a company under the Companies Acts
- formed and registered as an Industrial and Provident society
- established by a Royal Charter or Letters Patent

- incorporated by statute

‘Unrestricted funds’ (including designated funds) are income or funds which can be spent at the discretion of the trustees in furtherance of any of the charity’s aims. If part of an unrestricted income fund is earmarked for a particular project it may be designated as a separate fund, but the designation has an administrative purpose only, and does not legally restrict the trustees’ discretion to spend the fund.

## Annex 2: PRI checklist

When considering whether to invest in a PRI, trustees should be satisfied that it is in the best interests of the charity and that the level of risk they are taking is appropriate.

This checklist sets out the sort of questions that trustees should ask themselves when thinking about making a PRI:

- **‘Does the PRI further the aims of our charity?’**
  - Which of our charitable aims are we funding? A PRI must be made wholly in furtherance of one or all of them.
  - Is this the best way we can serve the needs of our beneficiaries in the context of the charity’s operations as a whole?
  - How does the organisation we are investing in share or further the charity’s aims?
- **‘What private benefit might there be?’**
  - Have we considered what private benefit there might be to others as a result of the proposed PRI?
  - If there is any private benefit to a person or an organisation, is it necessary, reasonable and in the interests of the charity?
- **‘What advice do we need to take?’**
  - Do we need to take advice about a PRI? For example, about the viability of a project, the terms of a loan, or whether we need to carry out due diligence checks?
- **‘Have we considered the terms of the agreement?’**
  - Are the terms on which the PRI is made reasonable as far as we are aware?
  - How easily can the PRI be ended if circumstances change? For example, what will happen if the organisation we are investing in makes a significant change to the nature of its activities, there is poor performance or the objectives of the PRI are achieved earlier than expected.
- **‘What are the risks for our charity?’**
  - How reliant is our charity on getting a financial return? The viability of a charity may be threatened if it is reliant on a predicted level of financial return that does not materialise.
  - What is the financial health of the recipient of the PRI?
- **What other factors may impact on the success of the project or the financial return (for example, the rate of inflation or exchange rates)?**
  - What is the risk that a recipient will default on their contractual obligations and how will we manage this?
  - Under what conditions can the PRI be converted into a grant or written off?

- Are there any potential reputation risks to the charity - for example, through private benefit to non-beneficiaries if the PRI is made to a commercial organisation?
- What are the tax implications of the PRI? Some investments may be treated as non-charitable expenditure, with tax implications for our charity.
- **‘Have we considered what governance arrangements should be in place?’**
  - How are our trustees going to manage the relationship with intermediaries or the recipient of the PRI?
  - What monitoring and review arrangements are in place to assess the impact and potential financial return of the PRI?
  - Have the charity’s staff involved in authorising the PRI had appropriate training? How will decisions be supervised and monitored?

**BINGLEY EDUCATIONAL TRUST  
NOT REGISTERED WITH CHARITY COMMISSION**

**RECEIPTS AND PAYMENTS ACCOUNT AS AT 31 OCTOBER 2019**

<b>2018-19</b>	<b>RECEIPTS</b>		<b>2019-20</b>
<u>£659.17</u>	<b>Bank Interest</b>		<u>£922.83</u>
£659.17			£922.83
	<b>PAYMENTS</b>		
£0.00	Grants to Individuals		
£0.00	Grants to Institutions	£4,000.00	
£0.00	Investment of Capital		
<u>£0.00</u>	Other		£4,000.00
£0.00			
£659.17	<b>NET RECEIPTS/(PAYMENTS) FOR THE YEAR</b>		-£3,077.17
£0.00	CASH AND BANK BALANCES AT 1 APRIL 2019 B/FWD		£659.17
<u>£659.17</u>	<b>CASH AND BANK BALANCES AT 31 OCTOBER 2019</b>		<u>-£2,418.00</u>

**STATEMENT OF ASSETS AND LIABILITIES**

<b>CASH FUNDS AT THE END OF THE YEAR</b>		
<u>£659.17</u>	Bank	<u>-£2,418.00</u>
<b>NON MONETARY ASSETS</b>		
	<b>Value</b>	<b>Cost Price</b>
£226,000.00	£226,000.00	£226,000.00
<u>£226,000.00</u>	<u>£226,000.00</u>	<u>£226,000.00</u>

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Unvested Capital	Bank Interest Rate	31/10/2019 to 31/03/2019 number of months	01/04/2019 to 31/10/2019 Number of months	
226000	2018-19	0.70%	5	1582
226000	2019-20 estimate	0.70%	7	226

1582	131.83	659.1667
1582	131.83	922.8333

## REPORT OF THE INDEPENDENT EXAMINER TO THE

### TRUSTEES OF THE CHARLES SEMON EDUCATIONAL FOUNDATION

I have examined the attached financial statement which has been prepared under the historical cost convention

#### RESPECTIVE RESPONSIBILITIES OF TRUSTEES AND EXAMINER

As the charity's trustees you are responsible for the preparation of the accounts: you consider that the audit requirement of section 43(2) of the Charities Act 1993 (the Act) does not apply: It is my responsibility to state, on the basis of procedures specified in the General Directions given by the Charity Commissioners under section 43(7)(b) of the act, whether particular matters have come to my attention.

#### BASIS OF INDEPENDENT EXAMINER'S REPORT

My examination was carried out in accordance with the General Directions given by the Charity Commissioners. An examination includes a review of the accounting records kept by the charity and a comparison of the accounts presented with those records. It also includes consideration of any unusual items or disclosures in the accounts, and seeking explanations from you as trustees concerning any such matters. The procedures undertaken do not provide all the evidence that would be required in an audit, and consequently I do not express an audit opinion on the view given by the accounts.

#### INDEPENDENT EXAMINER'S STATEMENT

In connection with my examination, no matter has come to my attention:

1. which gives me reasonable cause to believe that in any material respect the requirements

\* to keeping accounting records in accordance with section 41 of the Act: and

\* to prepare accounts which accord with the accounting records and to comply with the accounting requirements of the Act.

have not been met ; or

2. to which, in my opinion, attention should be drawn in order to enable a proper understanding of the accounts to be reached.

Signed

Date

Mr P Westcott CPFA

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**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

# Constitution of a Charitable Incorporated Organisation whose only voting members are its charity trustees

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## **Charitable Incorporated Organisation: Model constitution for a CIO whose only voting members are its charity trustees**

### **(‘Foundation’ model constitution)**

This document is a Charity Commission model constitution for a Charitable Incorporated Organisation (CIO). If you want to set up a CIO, you will find it easiest to use one of our model constitutions.

This guidance briefly explains:

- What a CIO is
- How to decide whether the CIO is the right form for your charity
- How to choose the right model constitution
- How to complete the model constitution and register as a charity
- Where to get more information and advice

There are notes explaining key points about each clause in the model constitution, to help you decide how to complete it.

We also have more detailed guidance on CIOs available on our website.

### **What is a Charitable Incorporated Organisation?**

The Charitable Incorporated Organisation (CIO) is a new legal form for a charity. It has been created in response to requests from the charitable sector. It is a new incorporated form of charity which is not a limited company or subject to company regulation.

The Charities Act 2011 creates the basic legal framework for the CIO. This framework is completed by regulations:

- the Charitable Incorporated Organisations (General) Regulations 2012 (‘General Regulations’); and
- the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (‘Dissolution Regulations’).

### **Is the CIO the right structure for our charity?**

Choosing the right legal structure and governing document is one of the first and most important decisions that the founders of a charity need to make. It will affect:

- how easy it will be to set up and run the charity
- how easy it will be to make changes in the future

- whether the charity can have a voting membership
- whether the charity can itself own premises, employ staff or enter contracts, or whether the trustees will have to do this personally.

With the introduction of the CIO, there are four main legal forms that charities may take. We produce model governing documents for each of these forms:

- Trust (governing document: trust deed; could also be created by a will);
- Unincorporated association (governing document: constitution or rules);
- Company limited by guarantee (governing document: memorandum and articles of association for company formed before September 2009; articles of association for company formed since then);
- CIO (governing document: constitution).

An incorporated form, CIO or company limited by guarantee, may be suitable for a charity that will:

- own land in its own name
- control substantial funds or assets
- enter into contracts, for example by employing staff, or
- engage in charitable activities involving financial risks

Some points to note about CIOs:

- A CIO is a corporate body (like a company) that can own property, employ staff and enter into other contracts in its own name (rather than in the names of the trustees).
- Members of a company limited by guarantee have limited liability for its debts if it winds up (they only have to pay a fixed amount). Members of a CIO may either have no liability at all or (like a company) limited liability for its debts.
- Because they have additional legal protection, members of a corporate body (Company or CIO) must comply with extra regulations.
- Unlike companies, CIOs do not have to register with Companies House.
- Unlike companies, CIOs will not be fined for administrative errors like late filing of accounts, but some breaches of the CIO Regulations are legal offences.
- All CIOs must register with the Commission, regardless of their income. It follows that an exempt charity cannot be a CIO, and CIO may be unsuitable for other types of charity that don't have to register. (See our guidance on types of charity that don't have to register.)

- CIOs must produce accounts under charity law, not company law. This allows smaller CIOs (income below £250,000) to produce simpler receipts and payments accounts.
- To simplify the CIO framework, there is currently no provision for CIOs to issue debentures, or for a register of charges (mortgages etc) over CIO property.

For more information on other legal forms, see our guidance on [choosing your charity's governing document](#). Another useful source of advice is the Get Legal website and online decision tool ([www.getlegal.org.uk](http://www.getlegal.org.uk)).

### **Why are there two different model constitutions for a CIO?**

Like companies (which must have both members and company directors) all CIOs must have members and charity trustees. Some CIOs may want the only members to be the charity trustees; others may want a wider membership open to other people.

We have produced two model constitutions for CIOs:

- the **'foundation'** model (this model) is for charities whose **only** voting members will be the charity trustees;
- the **'association'** model is for charities that will have a wider membership, including voting members other than the charity trustees.

In practice a CIO using the 'foundation' model will be like an incorporated charitable trust, run by a small group of people (the charity trustees) who make all key decisions. Charity trustees may be appointed for an unlimited time and they will probably appoint new charity trustees.

A CIO using the 'association' model will have a wider voting membership who must make certain decisions (such as amending the constitution), will usually appoint some or all of the charity trustees (who will serve for fixed terms), and may be involved in the work of the CIO.

There are not two different forms of CIO. A CIO with the 'foundation' model could change its constitution to the 'association' model if it wanted a wider voting membership. (This could also happen the other way around, but members who were not trustees would have to agree to give up their membership.) Some changes would need our approval.

### **Why use one of the Commission's model CIO constitutions?**

A CIO's constitution **must** be in the form to be specified by Commission regulations (or as near to that form as the circumstances allow). These regulations will specify that the constitution should be in the form of one of our model constitutions. This still allows some flexibility, as explained in the guidance notes on the model. The constitution **must** be in English if the CIO's principal office is in England, but may be in English or Welsh if the principal office is in Wales.

A CIO's constitution **must** include certain provisions to comply with the Charities Act 2011 (the 2011 Act) and the General Regulations. However the 2011 Act and General Regulations do not prescribe an exact wording.

There are other provisions that **must** be included **if** they apply to a particular CIO. If they do not fully apply, the constitution **must** explain to what extent or how they apply.

We have included other provisions in this model constitution because:

- they reflect good practice that we recommend
- they remind the trustees about a legal requirement
- the constitution would not work properly without them, or
- charities have said that it would be a useful option and it would be helpful to have standard wording

Using one of the Commission's models will help to ensure that you include all of the constitutional provisions that your CIO will need:

- to meet the requirements of the law
- to comply with good practice, and
- to be practical and workable

The guidance notes will prompt you to think about whether you may need to include particular powers.

The 2011 Act and the General Regulations don't require you to use a particular wording, but the wording in our models has been carefully considered and also informed by specialists in the charity sector. Using one of our models will also mean that there will be fewer questions for us to ask and consider when you apply for charity registration.

### **How do we become a CIO?**

#### i) New charities

To set up and register a new CIO, follow the procedure set out below under Next steps.

#### ii) Existing charitable trusts and unincorporated associations

An existing unincorporated charity can only change to a CIO by:

- setting up and registering a new CIO (in the same way as for a new charity), then
- transferring its property and operations to the CIO.

You should check whether your charity can transfer its property in this way, or whether you need authorisation from the Commission. Once the transfer is complete, the original charity can normally be wound up and removed from the register, but different arrangements may apply to charities with permanent endowment (see below).

### iii) Existing charities with permanent endowment

Some charitable trusts have property (land or investments) that cannot be expended as income. Property restricted in this way is called permanent endowment. This may include land that must be used in a particular way for the purposes of the charity.

- Often, these charities have no power to wind up or transfer their permanent endowment.
- CIOs cannot hold permanent endowment as part of their own (corporate) property.

The General Regulations make special provision to enable charities with permanent endowment to transfer to a CIO. The trustees of the permanently endowed charity need to:

- set up and register a new CIO with the Commission, then
- make a vesting declaration under section 310 of the 2011 Act (as amended by the General Regulations), transferring all property of the original charity to the new CIO.

The vesting declaration will:

- transfer expendable property to the CIO as part of its corporate property
- vest legal title to the permanent endowment in the CIO, to be held on its original trusts
- appoint the CIO as trustee for the permanent endowment trust and give it the powers of a trust corporation for that trust
- mean that the CIO and the permanent endowment trust are treated as a single charity for registration and accounting purposes (they won't need to register separately or produce separate accounts).

If charities use a vesting declaration to carry out a merger, they must record it in the [Register of Mergers](#). Vesting declarations are legal documents, so you may need advice from a solicitor or other professional.

There are circumstances in which permanent endowment can be spent; it is not absolutely protected.

For further information see our general guidance on CIOs.

iv) Existing charitable companies and industrial and provident societies

Once all of the provisions are in force, it will also be possible for an existing charitable company or charitable industrial and provident society to convert directly into a CIO; there are specific procedures for this.

To manage demand, the Commission is phasing in the introduction of the CIO and not all of these options will be available immediately. Please see our general guidance on CIOs for details.

### What guidance should we consider before we begin?

- There is comprehensive guidance on setting up and registering a charity on our website.
- We also have more detailed **guidance on CIOs**.
- *The Essential Trustee* sets out the basics that all charity trustees need to know.

### Next steps

#### 1. Completing the constitution

Please note – we are publishing the model constitutions in this format (PDF) to help charities and their professional advisers to prepare for the implementation of the CIO. We are currently looking into more flexible and user-friendly formats that will make it easier for promoters to complete the constitution.

Once you have decided to apply to register a CIO and have chosen the correct model constitution, please read the constitution and accompanying guidance notes carefully. In the guidance notes we say that something **'must'** be included in the constitution if it is a legal requirement in the 2011 Act or the General or Dissolution Regulations. We say that something **'should'** be included if we consider it to be minimum good practice. We **'recommend'** that you include other provisions to help ensure the smooth running of the CIO in future.

There are guidance notes on each clause explaining what it is for, and whether you **must** or **should** include (all or part of) it, and whether it **may** or **should** be amended to fit the circumstances. Even where clauses are completely optional, however, we advise you to follow the model provisions or suggested alternatives unless there is a particular need, in the interests of your charity, to do otherwise.

Some clauses contain options for you to choose from and blank spaces that you will need to fill in.

If you want to add any special or complex provisions that you have drafted yourself, you may need advice from a solicitor or other adviser. We may need more time to look at any specialist changes. Please make clear what changes you make, and why they are necessary. This will help us to consider your application as quickly as possible. We cannot guarantee to accept every organisation which uses one of our models as charitable. We must consider each case separately.

When you have finished, please check that you have:

- filled in all the blanks,
- deleted any clauses which you don't need; and
- numbered the remaining clauses (and sub-clauses) in sequence (including cross-references).

### 2. Applying to register

To register a new charity, [apply online](#). If you are unable to apply online, please contact Charity Commission Direct. The best way to contact us is by email.

### 3. How long will it take?

We can normally make a decision in 40 working days if an organisation:

- can use our model wording for its objects ([Example charitable objects on our website](#));
- shows that its activities are or will be consistent with the objects;
- shows that any private benefit is only incidental and is properly managed; and
- uses our model governing document.

Other applications will need closer consideration and so will take longer.

## Notes

These explanatory notes are for advice and reference only and do not form part of the text of the constitution.

Inserting the date of the constitution is good practice, and helps to ensure everyone has the same document. The date to enter here is the date the constitution, or any amendment to it, has been registered by the Commission, as this is when it comes into effect. Leave this undated until the constitution has been registered.

**Clause 1 - Name** – You **must** include the name of the CIO in the constitution. In general, the Commission can accept any charity name unless it would be misleading, offensive or too similar to the name of an existing charity (unless the CIO is replacing that charity). The Commission has powers to require a charity to change its name if this happens. Further information on this is provided in our publication *Registering as a charity* (CC21) and in our Operational Guidance (OG330 - *Names of charities*), which are available on our website. There are also legal restrictions on using the same name as an existing company (unless it is a charitable company that is converting to a CIO) or as a former company or CIO that underwent insolvent liquidation – if in doubt seek professional advice.

**Clause 2 - Principal office** – The constitution **must** state whether the CIO's principal office is in England or Wales.

**Clause 3 – Objects** – The CIO **must** have exclusively charitable objects which you **must** set out in the constitution. Guidance on appropriate wording is available on our website. The key elements to include are:

- the purpose or purposes for which the CIO is being established;
- the people who can benefit; and, if appropriate;
- any geographic limits defining the area of benefit. If you include an area of benefit, it is common to define it by reference to a local government area: this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished. If this happens in future, contact the Commission for advice on amending the objects.

NB. If you cannot fit your objects in the space provided, please include them on a separate piece of paper and submit this with the constitution

## Constitution of a Charitable Incorporated Organisation whose only voting members are its charity trustees

### (‘Foundation’ model constitution)

Date of constitution (last amended):

.....

#### 1. Name

The name of the Charitable Incorporated Organisation (“the CIO”) is

.....

#### 2. National location of principal office

The CIO must have a principal office in England or Wales. The principal office of the CIO is in [England][Wales].

#### 3. Object[s]

The object[s] of the CIO [is][are]

.....

.....

.....

.....

Nothing in this constitution shall authorise an application of the property of the CIO for the purposes which are not charitable in accordance with [section 7 of the Charities and Trustee Investment (Scotland) Act 2005] and [section 2 of the Charities Act (Northern Ireland) 2008]

#### 4. Powers

The CIO has power to do anything which is calculated to further its object[s] or is conducive or incidental to doing so. In particular, the CIO has power to:

- (1) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 and 125 of the Charities Act 2011, if it wishes to mortgage land;
- (2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (3) sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;

## Notes

If the CIO needs to be recognised as a charity in Scotland and/or Northern Ireland you will need to include the relevant parts of the wording in square brackets to meet the requirements of charity law in those countries

**Clause 4 - Powers** – The Charities Act 2011 ('2011 Act') gives a CIO power to do 'anything which is calculated to further its purposes or is conducive or incidental to doing so'. Strictly speaking, this is the only power a CIO needs. It can, however, be helpful to state certain powers explicitly in the constitution. In particular, a stated power to borrow **[(1)]** may reassure potential lenders. For this reason we recommend that you include the example powers set out in the model (these include powers to buy, sell and lease property, employ staff and delegate investment management to a professional fund-manager). You **may** add other express powers here if you wish to.

You **may** include a constitutional provision restricting the general power in the 2011 Act. You **must only** include such a restriction if it is in the CIO's interests. You **must not** restrict the CIO's powers in a way that prevents it from disposing of its property. Restrictions on the powers are not provided for in this model and we recommend that you seek appropriate advice if you are considering this.

**Clause 5 – Application of income and property** – We recommend that you include this clause.

**(1)** reflects the provisions in the 2011 Act about a CIO charity trustee's entitlement to reasonable expenses and that they may benefit from trustee indemnity insurance. We recommend that you include it in the constitution, to inform people involved with the charity.

**(2)** reflects charity law requirements that the income and property of a CIO must be applied solely to further its objects and not to benefit the members or charity trustees (except as permitted by the governing document (see clause 6) or other express power). The trustees have a duty to ensure that the funds are correctly applied in accordance with this principle.

### **Clause 6 - Benefits and payments to charity trustees and connected persons**

– Charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the constitution). This restriction extends to people closely connected to a trustee ('connected persons' – this term is defined in the interpretation clause). You **should** include this clause so that charity trustees

- (4) employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 6 (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of that clause;
- (5) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000.

## 5. Application of income and property

- (1) The income and property of the CIO must be applied solely towards the promotion of the objects.
  - (a) A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.
  - (b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (2) None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO.
- (3) Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 6.

## 6. Benefits and payments to charity trustees and connected persons

### (1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the CIO;
- (c) be employed by, or receive any remuneration from, the CIO;
- (d) receive any other financial benefit from the CIO;

unless the payment or benefit is permitted by sub-clause (2) of this clause or authorised by the court or the prior written consent of the Charity Commission ("the Commission") has been obtained. In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

## Notes

are clear about the restrictions that apply to them; and unless you include it, the statutory provisions will apply. Even where trustees are allowed to benefit from the CIO, this must only happen where the benefit is in the interests of the CIO. Our guidance *Trustee expenses and payments* (CC11) provides more information about trustee benefits.

The model clause permits a minority of the charity trustees or connected persons to receive payments and other benefits in certain instances (such as for goods and services they supply to the CIO), subject to the stated controls. The option also allows other types of trustee benefit, subject to the Commission's prior consent.

You **may** restrict the benefits that the charity trustees will be allowed receive by altering these clauses, but if you later need to undo any of the restrictions it will require the Commission's consent to do so. Trustees do not have to use these powers just because they have them – we suggest you may find it simpler to keep to the model wording.

None of these options allows trustees to receive payment for acting as a trustee.

**(2)(a) If all of the trustees will benefit from the activities of the CIO (for example, by using facilities available to all inhabitants of the area, such as a community centre), you may wish to substitute the following wording: "A charity trustee or connected person may receive a benefit from the CIO as a beneficiary provided that it is available generally to the beneficiaries of the CIO"**

**(2)(d)** – The CIO should document the amount of, and the terms of, the trustee's or connected person's loan.

## (2) **Scope and powers permitting trustees' or connected persons' benefits**

- (a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that a majority of the trustees do not benefit in this way.
- (b) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the CIO where that is permitted in accordance with, and subject to the conditions in, sections 185 to 188 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with services provided to the CIO by the charity trustee or connected person.
- (d) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.

## (3) **Payment for supply of goods only – controls**

The CIO and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the CIO and the charity trustee or connected person supplying the goods ("the supplier").
- (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.

- (c) The other charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.
  - (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the CIO.
  - (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
  - (f) The reason for their decision is recorded by the charity trustees in the minute book.
  - (g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6.
- (4) In sub-clauses (2) and (3) of this clause:
- (a) “the CIO” includes any company in which the CIO:
    - (i) holds more than 50% of the shares; or
    - (ii) controls more than 50% of the voting rights attached to the shares; or
    - (iii) has the right to appoint one or more directors to the board of the company;
  - (b) “connected person” includes any person within the definition set out in clause [30] (Interpretation);

**Clause 7 – Conflicts of interest and conflicts of loyalty** – The General Regulations provide that a charity trustee of a CIO must not take part in any decision from which they would directly or indirectly benefit personally, unless they cannot reasonably be regarded as having a conflict of interest. This clause reminds the trustees of this requirement and also reflects wider good practice on managing conflicts of interest and conflicts of loyalty. We recommend that you include it.

## 7. Conflicts of interest and conflicts of loyalty

A charity trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and
- (2) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the CIO and any personal interest (including but not limited to any financial interest).

## Notes

### Clause 8 – Liability of members -

The constitution **must** state whether members of the CIO *either*

- (a) have no liability to contribute to the assets of the CIO if it is wound up **[option 1] or:**
- (b) will be liable to contribute up to a maximum amount each if the CIO cannot meet its financial obligations when it is wound up **[option 2]**.

**Choose one option and delete the other.** There is no preference or requirement in the legal framework for members to be liable to contribute anything.

If you choose option 2, you **must** insert the maximum amount (normally a nominal sum such as £1 or £10) for which members will be individually liable.

### Clause 9 - Charity trustees

**(1)** This clause explains the charity trustees' legal function, legal duty to act in good faith, and statutory duty of care. We recommend that these should be set out in the constitution. The trustees cannot adopt a lower duty of care.

**(2)** You **should** include provisions setting out who is eligible to be a charity trustee of the CIO.

Sub-clause **(a)** requires all trustees to be individuals. It is legally permissible for a corporate body to be a charity trustee, but we would advise against a trustee body including both individuals and one or more corporate bodies.

Clauses 9-13 are drafted on the basis that the CIO will be governed by a trustee body made up of a number of individuals. If there is a good reason why the CIO will be administered by a single trustee (eg a corporation) or have any other trusteeship arrangement, you will need to amend these clauses, and should seek your own professional advice.

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

## 8. Liability of members to contribute to the assets of the CIO if it is wound up

### Option 1

If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

### Option 2

- (1) If the CIO is wound up, each member of the CIO is liable to contribute to the assets of the CIO such amount (but not more than £[ ]) as may be required for payment of the debts and liabilities of the CIO contracted before that person ceases to be a member, for payment of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributing members among themselves.
- (2) In sub-clause (1) of this clause "member" includes any person who was a member of the CIO within 12 months before the commencement of the winding up.
- (3) But subject to that, the members of the CIO have no liability to contribute to its assets if it is wound up, and accordingly have no personal responsibility for the settlement of its debts and liabilities beyond the amount that they are liable to contribute.

## 9. Charity trustees

### (1) Functions and duties of charity trustees

The charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. It is the duty of each charity trustee:

- (a) to exercise his or her powers and to perform his or her functions in his or her capacity as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and
- (b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
  - (i) any special knowledge or experience that he or she has or holds himself or herself out as having; and,

## Notes

The suggested provisions in **(b)** reflect the law and **(c)** is based on good practice. Note that there are offences under the General Regulations concerning legally disqualified individuals acting as trustees.

If there are to be additional conditions for eligibility to be a charity trustee (beyond the legal restrictions), these **must** be stated in the constitution. For example, some charities add requirements to ensure that trustees have particular knowledge or experience (eg of the locality in which the CIO operates or of issues relevant to the people that the CIO serves).

**(2)(d)** Contains an optional restriction on the proportion of charity trustees who are under 18. The Commission encourages charities to involve young people in their governance in whatever ways are appropriate in the circumstances, but advises against having a board made up entirely of people under 18. CIO trustees cannot be under 16.

**(3)** The General Regulations require that the constitution **must** state the minimum number of charity trustees, **if** more than one.

We recommend setting and including minimum and maximum numbers of charity trustees.

A CIO can have a fixed number of trustees or a range between a maximum and minimum (which will give the CIO more flexibility). **Option 1a** provides for a specified maximum number. **Option 1b** provides for no maximum limit. **Option 2** provides for other trustee appointment arrangements in accordance with clause 13 (see below).

**Choose Clause 9(3) Option 1 (and Option 1a or b) and Clause 10 Option 1 or choose Clause 9(3) Option 2 and Clause 10 Option 2 (selecting the relevant parts of each section). Delete the options that you have not chosen.**

For good practice, a CIO should have at least three charity trustees. If the number of trustees falls below the minimum specified in the constitution, the provisions in clause 12(3) will enable the remaining charity trustees to appoint new trustees and prevent the CIO from becoming inoperable.

- (ii) if he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

## (2) Eligibility for trusteeship

- (a) Every charity trustee must be a natural person.
- (b) No individual may be appointed as a charity trustee of the CIO:
  - if he or she is under the age of 16 years; or
  - if he or she would automatically cease to hold office under the provisions of clause [12(1)(e)].
- (c) No one is entitled to act as a charity trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the charity trustees decide, his or her acceptance of the office of charity trustee.
- [(d) At least one of the trustees of the CIO must be 18 years of age or over. If there is no trustee aged at least 18 years, the remaining trustees may only act to call a meeting of the charity trustees, or appoint a new charity trustee.]

## (3) Number of charity trustees

### Option 1

- (a) There must be at least [three] charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.

### Option 1a

- (b) The maximum number of charity trustees is [12]. The charity trustees may not appoint any charity trustee if as a result the number of charity trustees would exceed the maximum.

### Option 1b

- (b) There is no maximum number of charity trustees that may be appointed to the CIO.

**Notes**

A CIO should have enough charity trustees to effectively carry out their duties, but not too many so that it becomes impractical to hold effective trustee meetings where everyone can participate in decision making. We suggest a maximum of 12 trustees, but you **may** choose a higher or lower number depending on the CIO’s needs.

**(4)** The General Regulations require that the constitution **must** state the names of the first charity trustees.

We recommend that you ‘stagger’ the terms of office of the first trustees to ensure that they do not all stand down at the same time. For example, if there are three trustees, one might be appointed for four years, one for three years and one for two years.

**10 – Appointment of charity trustees**

- The constitution **must** make provision about the appointment of one or more persons to be Charity trustees.

This clause contains two options. **Choose the corresponding options in Clause 9(3) and Clause 10.**

**Option 1** provides for new trustees to be appointed by the current trustees. This is the simplest, and likely to be the usual, arrangement for most foundation CIOs.

**Option 2** provides for new trustees to be appointed in different ways including appointment by the current trustees, ex-officio (ie by virtue of holding a certain office, eg the local vicar) and nomination by another organisation. If you use option 2 you will need to amend it to meet the CIO’s particular circumstances depending on the combination of different methods of appointment that will apply. These additional appointment methods are usually only appropriate for charities operating in particular local areas or with links to particular bodies, and where it is desired to involve members of local councils, local churches or other external organisations on the trustee body.

**Option 2**

- (a) There should be:  
[Not less than... nor more than]... appointed trustees;  
[... ex officio trustee[s]; and  
[Not less than... nor more than]... nominated trustees.]
- (b) There must be at least [three] charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.
- (c) The maximum number of charity trustees that can be appointed is as provided in sub-clause (a) of this clause. No trustee appointment may be made in excess of these provisions.

**(4) First charity trustees**

The first charity trustees are as follows[, and are appointed for the following terms] –

..... [for [4] years]

..... [for [3] years]

..... [for [2] years]

**10. Appointment of charity trustees**

**Option 1**

- (1) Apart from the first charity trustees, every trustee must be appointed [for a term of [three] years] by a resolution passed at a properly convened meeting of the charity trustees.
- (2) In selecting individuals for appointment as charity trustees, the charity trustees must have regard to the skills, knowledge and experience needed for the effective administration of the CIO.

**Option 2**

**(1) Appointed charity trustees**

- (a) Apart from the first charity trustees, every appointed trustee must be appointed [for a term of [three] years] by a resolution passed at a properly convened meeting of the charity trustees.
- (b) In selecting individuals for appointment as appointed charity trustees, the charity trustees must have regard to the skills, knowledge and experience needed for the effective administration of the CIO.

## Notes

it is good practice for trustees to be appointed for a fixed term, but you **may** instead provide for appointed trustees to be appointed indefinitely (ie for life or until they retire), in which case, delete the words in square brackets in clauses 9(4) and 10(1).

**Clause 11 – Information for new charity trustees** - This clause represents good practice; we recommend that you include it. It is vital for new trustees to have easy access to the information and training that they need in order to become effective members of the trustee body.

### [(2) **Ex officio Trustee[s]**

- (a) The [insert role] for the time being (“the office holder”) shall automatically (“ex-officio”) be a charity trustee, for as long as he or she holds that office.
- (b) If unwilling to act as a charity trustee, the office holder may:
  - (i) before accepting appointment as a charity trustee, give notice in writing to the trustees of his or her unwillingness to act in that capacity; or
  - (ii) after accepting appointment as a charity trustee, resign under the provisions contained in clause [12] (Retirement and removal of charity trustees).

The office of ex officio charity trustee will then remain vacant until the office holder ceases to hold office.]

### [(3) **Nominated Trustee[s]**

- (a) [insert name of appointing body] (“the appointing body”) may appoint [insert number] charity trustees.
- (b) Any appointment must be made at a meeting held according to the ordinary practice of the appointing body.
- (c) Each appointment must be for a term of [three] years.
- (d) The appointment will be effective from the later of:
  - (i) the date of the vacancy; and
  - (ii) the date on which the charity trustees or their secretary or clerk are informed of the appointment.
- (e) The person appointed need not be a member of the appointing body.
- (f) A trustee appointed by the appointing body has the same duty under clause 9(1) as the other charity trustees to act in the way he or she decides in good faith would be most likely to further the purposes of the CIO]

## **11. Information for new charity trustees**

The charity trustees will make available to each new charity trustee, on or before his or her first appointment:

- (a) a copy of the current version of this constitution; and
- (b) a copy of the CIO’s latest Trustees’ Annual Report and statement of accounts.

## Notes

### Clause 12 – Retirement and removal of charity trustees

The General Regulations require that the constitution **must** contain provisions setting out how charity trustees (and members) may retire or otherwise cease to hold office. The provisions in the model follow recommended good practice. There is an optional provision (sub clause (3)) to ensure that trustees do not serve for more than three consecutive terms, which may help to encourage regular turnover and change on the trustee board. (It is good practice to aim for a balance between continuity and change.)

### Clause 13 - Taking of decisions by charity trustees

The power to take decisions by resolution in writing or electronic form outside meetings is optional, but if the trustees intend to use it, it **must** be included in the constitution. This sub-clause sets out the procedure for written resolutions

## 12. Retirement and removal of charity trustees

- (1) A charity trustee ceases to hold office if he or she:
  - (a) retires by notifying the CIO in writing (but only if enough charity trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);
  - (b) is absent without the permission of the charity trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;
  - (c) dies;
  - (d) in the written opinion, given to the company, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a director and may remain so for more than three months;
  - (e) is disqualified from acting as a charity trustee by virtue of sections 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).
- (2) Any person retiring as a charity trustee is eligible for reappointment.
- [(3) A charity trustee who has served for [three] consecutive terms may not be reappointed for a [fourth] consecutive term but may be reappointed after an interval of at least [one year].]

## 13. Taking of decisions by charity trustees

Any decision may be taken either:

- at a meeting of the charity trustees; or
- by resolution in writing [or electronic form] agreed by a majority of all of the charity trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to which the majority of all of the charity trustees has signified their agreement. Such a resolution shall be effective provided that
  - a copy of the proposed resolution has been sent, at or as near as reasonably practicable to the same time, to all of the charity trustees; and
  - the majority of all of the charity trustees has signified agreement to the resolution in a document or documents which has or have been authenticated by their signature, by a statement of their identity accompanying the document or documents, or in such other manner as the charity trustees have previously resolved, and delivered to the CIO at its principal office or such other place as the trustees may resolve [within 28 days of the circulation date].

## Notes

### Clause 14 - Delegation by charity trustees

This power is optional. We recommend you include it for the smooth-running of the CIO. The General Regulations give charity trustees of a CIO automatic power to delegate tasks to sub-committees, staff or agents; but without this additional constitutional power, the trustees will be unable to delegate any power to make decisions.

Sub-clauses (2)(a)-(c) reflect minimum good practice and are safeguards that **should not** be removed or diminished.

### Clause 15 - Meetings of charity trustees

The General Regulations require that the Constitution **must** include provisions for the calling and running of meetings including the minimum number of trustees who shall form a quorum, appointment of a chair and, if trustees will be able to demand a poll (a counted vote, normally with voting papers), the procedure for conducting such a poll. The provisions in this model are good practice recommendations.

We have not included provision for trustees to demand a poll in this model constitution as feedback from our consultations suggested that most charities did not feel it was appropriate.

**(3)(a)** We recommend that the quorum for trustee meetings should not be less than one third of the number of trustees.

**(3)(c)** It is common, but not obligatory, for the Chair to have a casting vote. You **may** include or delete this power.

**(4)** - This clause is optional, but will be required if one or more of the CIO's trustees may from time to time participate in meetings by telephone or other electronic means where participants may not all be able to see and hear each other.

## 14. Delegation by charity trustees

- (1) The charity trustees may delegate any of their powers or functions to a committee or committees, and, if they do, they shall determine the terms and conditions on which the delegation is made. The charity trustees may at any time alter those terms and conditions, or revoke the delegation.
- (2) This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the charity trustees, but is subject to the following requirements:
  - (a) a committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;
  - (b) the acts and proceedings of any committee must be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable; and
  - (c) the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

## 15. Meetings of charity trustees

- (1) **Calling meetings**
  - (a) Any charity trustee may call a meeting of the charity trustees.
  - (b) Subject to that, the charity trustees shall decide how their meetings are to be called, and what notice is required.

- (2) **Chairing of meetings**

The charity trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the charity trustees present may appoint one of their number to chair that meeting.

- (3) **Procedure at meetings**

- (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is two charity trustees, or the number nearest to one third of the total number of charity trustees, whichever is greater, or such larger number as the charity trustees may decide from time to time. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.

## Notes

**Clause 16 – Membership of the CIO** - A CIO **must** have one or more members. In this model constitution the charity trustees are the only members and become members automatically. If the CIO is going to have a wider voting membership you will need use the **Association Model Constitution**.

The constitution **must** set out who is eligible for membership and how someone becomes a member. The constitution **must** contain provision for retirement and termination of membership. This model clause fulfils these requirements.

The General Regulations have been drafted on the basis that all members of a 'foundation' CIO will be charity trustees, and they will cease to be members of the CIO when they cease to be trustees.

**Clause 17 – Informal or associate (non-voting) membership** – We advise CIOs to include this power if they contemplate having an informal (associate) membership. Membership of this kind does **not** count as membership for legal purposes, for example in terms of voting rights, legal obligations to act in the interests of the charity or any liability to contribute to the assets of the CIO on dissolution.

**Clause 18 – Decisions which must be made by the members of the CIO** – we recommend that you include these powers and provisions in full

- (b) Questions arising at a meeting shall be decided by a majority of those eligible to vote.
- [(c) In the case of an equality of votes, the person who chairs the meeting shall have a second or casting vote.]

#### (4) **Participation in meetings by electronic means**

- (a) A meeting may be held by suitable electronic means agreed by the charity trustees in which each participant may communicate with all the other participants.
- (b) Any charity trustee participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
- (c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

### **16. Membership of the CIO**

- (1) The members of the CIO shall be its charity trustees for the time being. The only persons eligible to be members of the CIO are its charity trustees. Membership of the CIO cannot be transferred to anyone else.
- (2) Any member and charity trustee who ceases to be a charity trustee automatically ceases to be a member of the CIO.

### **[17. Informal or associate (non-voting) membership**

- (1) The charity trustees may create associate or other classes of non-voting membership, and may determine the rights and obligations of any such members (including payment of membership fees), and the conditions for admission to, and termination of membership of any such class of members.
- (2) Other references in this constitution to “members” and “membership” do not apply to non-voting members, and non-voting members do not qualify as members for any purpose under the Charities Acts, General Regulations or Dissolution Regulations.]

### **18. Decisions which must be made by the members of the CIO**

- (1) Any decision to:
  - (a) amend the constitution of the CIO;
  - (b) amalgamate the CIO with, or transfer its undertaking to, one or more other CIOs, in accordance with the Charities Act 2011; or

## Notes

(1) This sub-clause acts as a reminder that certain decisions must be made by the members, rather than by the trustees (although in practice they are the same persons).

(2) This sub-clause allows decisions of the members to be made at a general meeting or by written resolution.

(3) The decisions specified in (1) are subject to special requirements; this sub-clause acts as a reminder of those requirements.

(4) This sub-clause sets out the procedure for written resolutions

### Clause 19 - General meetings of members

The General Regulations state that the constitution **must** make provision about the holding and calling of general meetings, and procedure at such meetings including the minimum number of members who shall form a quorum, whether members can demand a poll, and the procedure for conducting such a poll. The provisions in this clause are good practice recommendations.

(c) wind up or dissolve the CIO (including transferring its business to any other charity)

must be made by a resolution of the members of the CIO (rather than a resolution of the charity trustees).

(2) Decisions of the members may be made either:

(a) by resolution at a general meeting; or

(b) by resolution in writing, in accordance with sub-clause (4) of this clause.

(3) Any decision specified in sub-clause (1) of this clause must be made in accordance with the provisions of clause [28] (amendment of constitution), clause [29] (Voluntary winding up or dissolution), or the provisions of the Charities Act 2011, the General Regulations or the Dissolution Regulations as applicable. Those provisions require the resolution to be agreed by a 75% majority of those members voting at a general meeting, or agreed by all members in writing.

(4) Except where a resolution in writing must be agreed by all the members, such a resolution may be agreed by a simple majority of all the members who are entitled to vote on it. Such a resolution shall be effective provided that:

(a) a copy of the proposed resolution has been sent to all the members eligible to vote; and

(b) the required majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature, by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.

The resolution in writing may comprise several copies to which one or more members has signified their agreement. Eligibility to vote on the resolution is limited to members who are members of the CIO on the date when the proposal is first circulated.

## 19. General meetings of members

### (1) Calling of general meetings of members

The charity trustees may designate any of their meetings as a general meeting of the members of the CIO. The purpose of such a meeting is to discharge any business which must by law be discharged by a resolution of the members of the CIO as specified in clause [18] (Decisions which must be made by the members of the CIO).

## Notes

**(1)** In a CIO with the 'foundation' model constitution, all of the members are trustees, so the trustees may decide which of their meetings should be treated as a general meeting of the members (subject to the notice requirements in **(2)**).

**(2)(a)** The minimum period of notice for general meetings should be reasonable in the CIO's particular circumstances, to enable as many members (trustees) as possible to participate in such decisions. For the decisions mentioned in clause 18(1) the period of notice is specified as 14 days in the General Regulations.

**(3)** This sub-clause means that the usual procedural provisions for trustees' meetings will also apply when they meet as members.

**Proxy voting** –The General Regulations stipulate that members can only vote by proxy if there is a specific provision in the constitution, which **must** set out:

- (a) how a member appoints a proxy;
- (b) the rights of the proxy; and
- (c) how the appointment is terminated.

For recommended wording (which does not form part of this model), please see the Appendix to this constitution.

**Postal voting** – The General Regulations stipulate that members can only use postal votes if there is a specific provision in the constitution, which **must** make provision about the circumstances in which, and the way in which, such votes may be given.

For recommended wording (which does not form part of this model), please see the Appendix to this constitution.

**Clause 20 – Saving provisions** – We recommend that you include this clause, to reduce the risk of trustees' decisions being declared invalid for purely technical reasons. This is, however, also covered in the General Regulations.

## **(2) Notice of general meetings of members**

- (a) The minimum period of notice required to hold a general meeting of the members of the CIO is [14] days.
- (b) Except where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations, a general meeting may be called by shorter notice if it is so agreed by a majority of the members of the CIO.
- (c) Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.

## **(3) Procedure at general meetings of members**

The provisions in clause 15 (2)-(4) governing the chairing of meetings, procedure at meetings and participation in meetings by electronic means apply to any general meeting of the members, with all references to trustees to be taken as references to members.

## **20. Saving provisions**

**(1)** Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:

- who was disqualified from holding office;
- who had previously retired or who had been obliged by the constitution to vacate office;
- who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

**(2)** Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for sub-clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 7 (Conflicts of interest).

## Notes

### Clause 21 – Execution of documents

- We recommend that you include this clause, for clarity about how documents may be validly executed on behalf of the CIO. It includes provision for use of a seal, which the General Regulations stipulate **must** be included if the CIO is to have a seal (but there is no requirement to have one). The General Regulations require the full name of the CIO to be clearly written on the seal, and failure to comply with this is an offence.

### Clause 22 – Use of electronic communications

- The General Regulations include provisions governing the use of electronic communication, and we recommend that CIO trustees familiarise themselves with the requirements. Failure to comply with the requirement to provide a hard copy would constitute an offence.

The General Regulations state that if the CIO intends to automatically use electronic communication or a website to send formal communications to members, this **must** be stated in the constitution, which must also set out the circumstances in which this will happen. For suggested wording, please see the appendix to this constitution.

### Clause 23 – Keeping of registers

- This clause reflects the requirements in the General Regulations that the CIO keeps registers of members and charity trustees and makes this information available for inspection by interested persons. This does not have to be stated in the constitution but is included to serve as a reminder.

**Clause 24 – Minutes** - This clause reflects the requirements of the General Regulations regarding record keeping. We recommend that this clause is included, to remind the trustees of their responsibilities.

## 21. Execution of documents

- (1) The CIO shall execute documents either by signature or by affixing its seal (if it has one)
- (2) A document is validly executed by signature if it is signed by at least two of the charity trustees.
- (3) If the CIO has a seal:
  - (a) it must comply with the provisions of the General Regulations; and
  - (b) the seal must only be used by the authority of the charity trustees or of a committee of charity trustees duly authorised by the charity trustees. The charity trustees may determine who shall sign any document to which the seal is affixed and unless otherwise so determined it shall be signed by two charity trustees.

## 22. Use of electronic communications

### [(1) General]

The CIO will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

- (a) the requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form;
- (b) any requirements to provide information to the Commission in a particular form or manner.

## 23. Keeping of Registers

The CIO must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, a (combined) register of its members and charity trustees.

## 24. Minutes

The charity trustees must keep minutes of all:

- (1) appointments of officers made by the charity trustees;
- (2) proceedings at general meetings of the CIO;
- (3) meetings of the charity trustees and committees of charity trustees including:
  - the names of the trustees present at the meeting;
  - the decisions made at the meetings; and
  - where appropriate the reasons for the decisions;

## Notes

### Clause 25 – Accounting records (etc) -

This clause reflects the trustees' duties under the 2011 Act. We recommend that this clause is included, to remind the trustees of their responsibilities

**Clause 26 - Rules** – We recommend that this power **should** be included for clarity, but charities automatically have this power and it does not have to be stated in the constitution. It is important that members are made aware of, and can easily obtain, copies of any rules.

**Clause 27 – Disputes** – It is good practice to include provisions for dealing with any disputes that arise between members of the CIO. Litigation can be expensive, and litigation about the internal affairs of a charity would almost certainly constitute “charity proceedings”, which can be taken only with the Commission’s authority. We would usually require the parties to a dispute to have tried mediation first.

### Clause 28 – Amendment of constitution

- This reflects the CIOs’ statutory power of amendment in sections 224-227 of the Charities Act 2011. A CIO’s constitution **should** include these provisions for ease of reference. The constitution of a CIO cannot extend the statutory power of constitutional amendment, but the General Regulations provide that you **may** include additional restrictions in some or all cases, for example requiring a longer period of notice before the meeting, or a higher majority, for certain changes. Additional restrictions are not provided for in this model and if you are considering this, we recommend that you take appropriate advice. To request the Commission’s consent to an amendment or to inform the Commission of an amendment, please complete our online form.

- (4) decisions made by the charity trustees otherwise than in meetings.

## 25. Accounting records, accounts, annual reports and returns, register maintenance

- (1) The charity trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of account, and to the preparation of annual reports and returns. The statements of account, reports and returns must be sent to the Charity Commission, regardless of the income of the CIO, within 10 months of the financial year end.
- (2) The charity trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities.

## 26. Rules

The charity trustees may from time to time make such reasonable and proper rules or byelaws as they may deem necessary or expedient for the proper conduct and management of the CIO, but such rules or bye laws must not be inconsistent with any provision of this constitution. Copies of any such rules or bye laws currently in force must be made available to any member of the CIO on request.

## 27. Disputes

If a dispute arises between members of the CIO about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

## 28. Amendment of constitution

As provided by sections 224-227 of the Charities Act 2011:

- (1) This constitution can only be amended:
  - (a) by resolution agreed in writing by all members of the CIO; or
  - (b) by a resolution passed by a 75% majority of those voting at a general meeting of the members of the CIO called in accordance with clause 19 (General meetings of members).
- (2) Any alteration of clause 3 (Objects), clause [29] (Voluntary winding up or dissolution), this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written consent of the Charity Commission.

### Clause 29 - Voluntary winding up or dissolution

This clause reflects the provisions of the 2011 Act and the General Regulations and Dissolution Regulations. We recommend that it is included in the constitution for ease of reference. It also highlights that there are other requirements in the Dissolution Regulations that the trustees must comply with, as there are offences for non-compliance. To inform the Commission of your CIO's dissolution, please complete our [online form](#).

(2) The constitution **must** contain directions about how its property will be applied if it is wound up. Any assets remaining after the payment of debts **must** be applied for charitable purposes that are similar to those of the CIO.

(4) It is essential for trustees to be aware that if the CIO is unable to meet its financial obligations in full when it is wound up, the provisions in sub-clauses (1)-(3) do not apply, and the relevant provisions of the Dissolution regulations must be followed. Failure to do so is not only an offence, but could lead to personal liability for the trustees.

- (3) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- (4) A copy of every resolution amending the constitution, together with a copy of the CIO's constitution as amended must be sent to the Commission by the end of the period of 15 days beginning with the date of passing of the resolution, and the amendment does not take effect until it has been recorded in the Register of Charities.

## 29. Voluntary winding up or dissolution

- (1) As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the CIO can only be made:
  - (a) at a general meeting of the members of the CIO called in accordance with clause 19 (General meetings of members), of which not less than 14 days' notice has been given to those eligible to attend and vote:
    - (i) by a resolution passed by a 75% majority of those voting, or
    - (ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or
  - (b) by a resolution agreed in writing by all members of the CIO.
- (2) Subject to the payment of all the CIO's debts:
  - (a) Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any remaining assets of the CIO shall be applied.
  - (b) If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.
  - (c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.
- (3) The CIO must observe the requirements of the Dissolution Regulations in applying to the Commission for the CIO to be removed from the Register of Charities, and in particular:
  - (a) the charity trustees must send with their application to the Commission:
    - (i) a copy of the resolution passed by the members of the CIO;

**Clause 30 - Interpretation** – this clause explains some terms used in the rest of the constitution.

- (ii) a declaration by the charity trustees that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and
- (iii) a statement by the charity trustees setting out the way in which any property of the CIO has been or is to be applied prior to its dissolution in accordance with this constitution;
- (b) the charity trustees must ensure that a copy of the application is sent within seven days to every member and employee of the CIO, and to any charity trustee of the CIO who was not privy to the application.
- (4) If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

### 30. Interpretation

In this constitution:

**“connected person”** means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the charity trustee;
- (b) the spouse or civil partner of the charity trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the charity trustee or with any person falling within sub-clause (a) or (b) above;
- (d) an institution which is controlled –
  - (i) by the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or
  - (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
  - (i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
  - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this constitution.

**“General Regulations”** means the Charitable Incorporated Organisations (General) Regulations 2012.

**“Dissolution Regulations”** means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The **“Communications Provisions”** means the Communications Provisions in [Part 9, Chapter 4] of the General Regulations.

**“charity trustee”** means a charity trustee of the CIO.

A **“poll”** means a counted vote or ballot, usually (but not necessarily) in writing.

## Appendix

The following provisions do not form part of the 'Foundation' model constitution but are available as options under clauses 19 (General meetings of members) and 22 (Use of electronic communications). For CIOs intending to include these powers in their constitutions, we recommend that you use the following wording. Notes on these clauses are included with the explanatory notes accompanying the clauses in the model.

### General meetings of members

#### (4) Proxy voting

- (a) Any member of the CIO may appoint another person as a proxy to exercise all or any of that member's rights to attend, speak and vote at a general meeting of the CIO. Proxies must be appointed by a notice in writing (a "proxy notice") which:
  - (i) states the name and address of the member appointing the proxy;
  - (ii) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
  - (iii) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the CIO may determine; and
  - (iv) is delivered to the CIO in accordance with the constitution and any instructions contained in the notice of the general meeting to which they relate.
- (b) The CIO may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (c) Proxy notices may (but do not have to) specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (d) Unless a proxy notice indicates otherwise, it must be treated as:
  - (i) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and
  - (ii) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

- (e) A member who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the CIO by or on behalf of that member.
- (f) An appointment under a proxy notice may be revoked by delivering to the CIO a notice in writing given by or on behalf of the member by whom or on whose behalf the proxy notice was given.
- (g) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (h) If a proxy notice is not signed or authenticated by the member appointing the proxy, it must be accompanied by written evidence that the person who signed or authenticated it on that member's behalf had authority to do so.

(5) **Postal Voting**

- (a) The CIO may, if the charity trustees so decide, allow the members to vote by post or electronic mail ("email") to elect charity trustees or to make a decision on any matter that is being decided at a general meeting of the members.
- (b) The charity trustees must appoint at least two persons independent of the CIO to serve as scrutineers to supervise the conduct of the postal/email ballot and the counting of votes.
- (c) If postal and/or email voting is to be allowed on a matter, the CIO must send to members of the CIO not less than [21] days before the deadline for receipt of votes cast in this way:
  - (i) a notice by email, if the member has agreed to receive notices in this way under clause [21] (Use of electronic communication, including an explanation of the purpose of the vote and the voting procedure to be followed by the member, and a voting form capable of being returned by email or post to the CIO, containing details of the resolution being put to a vote, or of the candidates for election, as applicable;
  - (ii) a notice by post to all other members, including a written explanation of the purpose of the postal vote and the voting procedure to be followed by the member; and a postal voting form containing details of the resolution being put to a vote, or of the candidates for election, as applicable.

- (d) The voting procedure must require all forms returned by post to be in an envelope with the member's name and signature, and nothing else, on the outside, inside another envelope addressed to 'The Scrutineers for [name of CIO]', at the CIO's principal office or such other postal address as is specified in the voting procedure.
- (e) The voting procedure for votes cast by email must require the member's name to be at the top of the email, and the email must be authenticated in the manner specified in the voting procedure.
- (f) Email votes must be returned to an email address used only for this purpose and must be accessed only by a scrutineer.
- (g) The voting procedure must specify the closing date and time for receipt of votes, and must state that any votes received after the closing date or not complying with the voting procedure will be invalid and not be counted.
- (h) The scrutineers must make a list of names of members casting valid votes, and a separate list of members casting votes which were invalid. These lists must be provided to a charity trustee or other person overseeing admission to, and voting at, the general meeting. A member who has cast a valid postal or email vote must not vote at the meeting, and must not be counted in the quorum for any part of the meeting on which he, she or it has already cast a valid vote. A member who has cast an invalid vote by post or email is allowed to vote at the meeting and counts towards the quorum.
- (i) For postal votes, the scrutineers must retain the internal envelopes (with the member's name and signature). For email votes, the scrutineers must cut off and retain any part of the email that includes the member's name. In each case, a scrutineer must record on this evidence of the member's name that the vote has been counted, or if the vote has been declared invalid, the reason for such declaration.
- (j) Votes cast by post or email must be counted by all the scrutineers before the meeting at which the vote is to be taken. The scrutineers must provide to the person chairing the meeting written confirmation of the number of valid votes received by post and email and the number of votes received which were invalid.

- (k) The scrutineers must not disclose the result of the postal/email ballot until after votes taken by hand or by poll at the meeting, or by poll after the meeting, have been counted. Only at this point shall the scrutineers declare the result of the valid votes received, and these votes shall be included in the declaration of the result of the vote.
- (l) Following the final declaration of the result of the vote, the scrutineers must provide to a charity trustee or other authorised person bundles containing the evidence of members submitting valid postal votes; evidence of members submitting valid email votes; evidence of invalid votes; the valid votes; and the invalid votes.
- (m) Any dispute about the conduct of a postal or email ballot must be referred initially to a panel set up by the charity trustees, to consist of two trustees and two persons independent of the CIO. If the dispute cannot be satisfactorily resolved by the panel, it must be referred to the Electoral Reform Services.

### **Use of electronic communications**

#### **(2) To the CIO**

Any member or charity trustee of the CIO may communicate electronically with the CIO to an address specified by the CIO for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the CIO.

#### **(3) By the CIO**

- (a) Any member or charity trustee of the CIO, by providing the CIO with his or her email address or similar, is taken to have agreed to receive communications from the CIO in electronic form at that address, unless the member has indicated to the CIO his or her unwillingness to receive such communications in that form.
- (b) The charity trustees may, subject to compliance with any legal requirements, by means of publication on its website:
  - (i) provide the members with the notice referred to in clause 19(2) (Notice of general meetings);
  - (ii) give charity trustees notice of their meetings in accordance with clause 15(1) (Calling meetings); [and

- (iii) submit any proposal to the members or charity trustees for decision by written resolution or postal vote in accordance with the CIO's powers under clause 18 (Members' decisions), 18(4) (Decisions taken by resolution in writing), or [[the provisions for postal voting] (if you have included this optional provision, please insert the correct clause number here)].
- (c) The charity trustees must –
  - (i) take reasonable steps to ensure that members and charity trustees are promptly notified of the publication of any such notice or proposal; and
  - (ii) send any such notice or proposal in hard copy form to any member or charity trustee who has not consented to receive communications in electronic form.

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**From:** [townclerk@bingleytowncouncil.gov.uk](mailto:townclerk@bingleytowncouncil.gov.uk) [mailto:townclerk@bingleytowncouncil.gov.uk]

**Sent:** 31 July 2019 14:52

**To:** Cllr David Warburton; Richard Winter

**Cc:** 'Ros Dawson'; 'Helen Owen'

**Subject:** Bingley Town Council- funds from sale of Priestthorpe Annex

Dear Councillor Warburton and Mr Winter,

Bingley Town Council resolved at its meeting held last night to request the following:

**Bingley Town Council writes to the trustees and solicitor dealing with this matter and asks the trustees:**

**1. To provide all the following information about the Trust and grant scheme within the next three months:**

- the name of the Trust and the grant scheme
- the registration number of the trust with the Charity Commission and/or other appropriate bodies
- what criteria will be used to award grants
- how big an individual grant can be
- the Trust's investment strategy, taking into account ESG criteria (environment and social impacts and governance)
- where the sale proceeds from the Annex are invested
- the Trust's governance arrangements
- where and when the Trust's accounts will be published
- what indemnity insurance has been purchased and at what cost
- what will happen to the money if HM Treasury asks for reimbursement
- who the members of the trust board are, why they're appointed, their term of office and their register of interests.

**2. To make the following amendments:**

- the £2000 granted to FOBP can be used to help with the process of asset transfer of the pool.
- the trustees should not only be Bradford Councillors but should include in their number representatives from Bingley (perhaps Town Councillors but not necessarily) who are not connected with Bradford Council to enable more diverse representation.
- ensure that a deserving project with clear support from local people can receive a substantial grant from the capital as well as interest accrued.
- to use 21<sup>st</sup> century boundaries to define Bingley and to consult on whether people wish the grant area to be Bingley centre, excluding Gilstead, Eldwick, Crossflatts, Micklethwaite and Cottingley, or for the grant area to mirror that of Bingley parish created in 2016.
- the Trust will convene in Bingley, not Bradford City Hall, making the Trust more accessible.

**3. To consider having discussions with Bingley Town Council about transferring the sale proceeds to the Town Council's stewardship.**

- there are considerable resource implications for the Town Council in managing a sum such as this, however if the Trustees indicated they would be prepared to have discussions about transferring the funds, the Town Council could decide whether or not to proceed and a full scoping exercise could be carried out.

I look forward to hearing from you.

Kind regards



*Ruth Batterley*

Ruth Batterley  
Town Clerk  
07703 188660

Cottingley Community Centre, Littlelands, Cottingley, Bingley, BD16 1AL  
[www.bingleytowncouncil.gov.uk](http://www.bingleytowncouncil.gov.uk)

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Mr Richard Winter  
Solicitor for the Trustees  
Deputy Team Leader  
Property, Commercial and Development Team  
Room 302, 3<sup>rd</sup> Floor  
City Hall  
Bradford  
BD1 1HY



BINGLEY GRAMMAR SCHOOL  
Belong Grow Succeed

✉ school@bingleygrammar.org  
🖱 www.bingleygrammar.org  
🐦 @bingleygrammar  
📘 Bingley Grammar School

11 December 2018

Dear Mr Winter

Thank you for your letter relating to the proceeds of sale of the Priestthorpe Annexe, and providing schools with an opportunity to make suggestions for the use of the funds.

There is no indication in the information provided as to whether the Council would expect the funds to be used for one major project or to be distributed amongst establishments providing education in Bingley.

The funds have come from something obviously of a capital nature and therefore we would expect the funds to be used towards a project or projects which will provide benefits into the future. Whilst this is a substantial sum of money, it is obviously limited, and any project will need to be sustainable. You would need to consider whether to allocate the funds to one central project that all could access, or to allocate to schools individually on the basis possibly of student numbers, but against an approved defined project.

If the funds are to be put towards something for the benefit of all in Bingley, then one idea could be to put it towards the retention of a swimming pool in Bingley as attempts are currently being made to keep the pool in Bingley. Local amenities are essential to maintaining a community. However, as a school with our own smaller pool, we are very aware of the ongoing costs of trying to manage a swimming pool, and it may be that ultimately this is not a viable option. Our own pool is currently used every day by our students, children from primary schools and external swimming groups, and we are currently unable to accommodate the level of requests from other groups. There is obviously therefore a demand for a swimming pool in Bingley, and this may become more acute as, due to the age of the plant and building, we are considering whether we will need to close our pool in the very near future.

If the intention is to look at projects to be suggested by individual schools for their own site, then effectively this will spread the funds further but individual projects will be smaller and impact fewer people. As a large secondary school though, and without the benefit of new buildings from the recent school rebuilding programmes, any improvements on our site would impact on a considerable number of Bingley children.

Headteacher Mr Luke Weston MSc BSc.

Bingley Grammar School, Keighley Road, Bingley, West Yorkshire, BD16 2RS Tel: 01274 807700 Fax: 01274 807713



If you are intending to split the funds between individual school sites, we have considered the projects that we currently have under review, which includes serious maintenance/replacement work on roofs, replacement of windows which have been in place for several decades, and efficiency improvements to heating systems etc, but thought that these would not be the sort of projects that you would be considering for these funds.

Other projects with long term benefits for all our students would be:

- Creation of a much-needed new science classroom (to help support the emphasis on STEM subjects for the future)
- Creation of covered outdoor space (linked to existing outdoor canopy and involving banked seating in a sloping area - to be used as both outdoor classroom space and for covered seating space for break & lunch times)
- Replacement of outside changing room for PE ( and removal of decades old wooden pavilion and old mobile cabin)

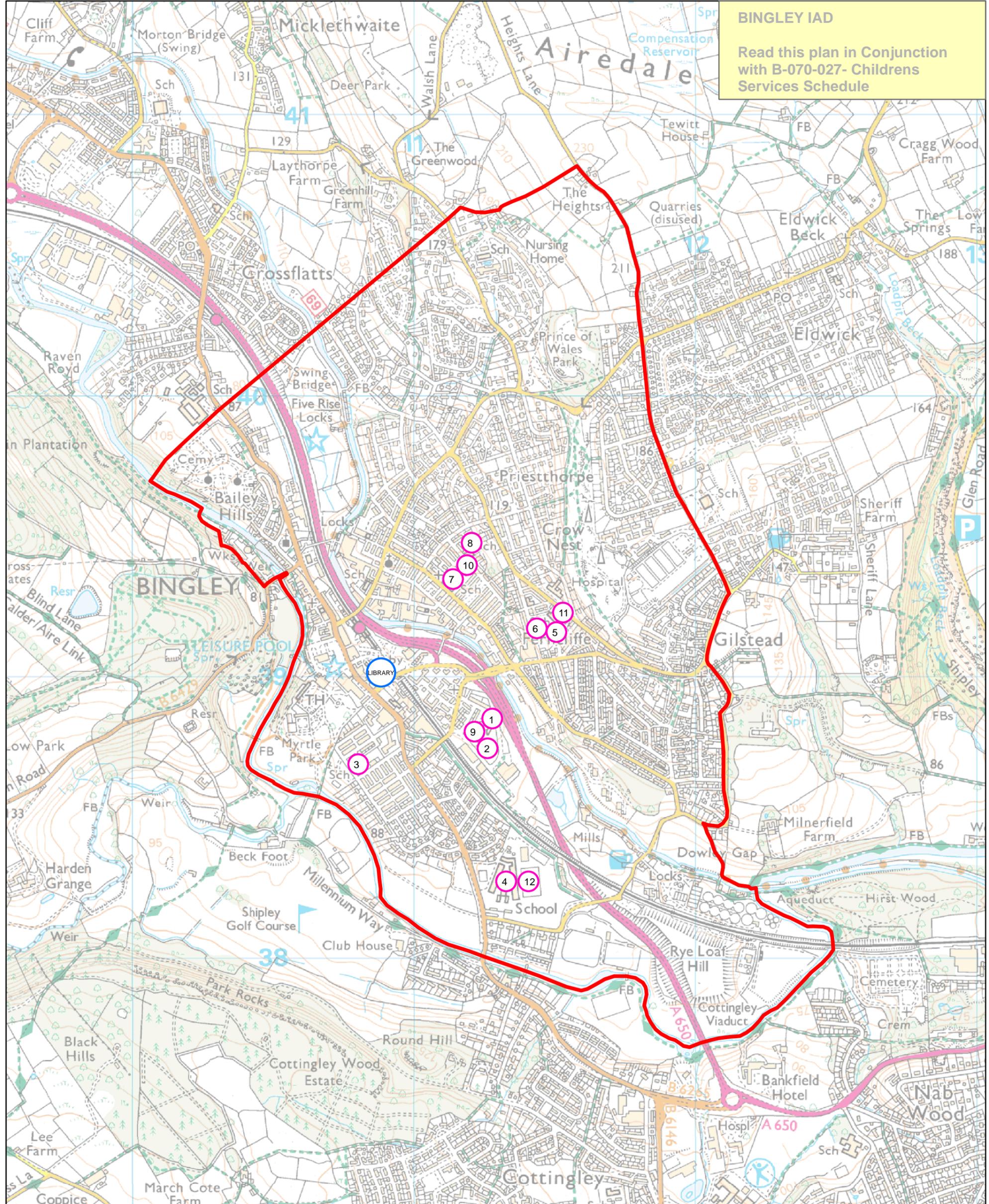
The costs involved are at various levels and would depend on the decision of how to allocate the funds.

We are happy to work with others and to be involved in any further discussions.

Yours sincerely



Judith Smithson  
Business Manager



**BINGLEY IAD**  
Read this plan in Conjunction  
with B-070-027- Childrens  
Services Schedule



City of Bradford Metropolitan District Council  
**ESTATES and PROPERTY**  
www.bradford.gov.uk

1st Floor Argus Chambers, Britannia House, Bradford, BD1 1HX

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Bingley IAD – Assets with Childrens Services interest as recorded on CBMDC database.

For BIAD area, see plan number B-070-026

(29<sup>th</sup> November 2019)

(18<sup>th</sup> December 2019) revision, read in conjunction with plan number B-070-027

**1 Asset Data - All: Trinity All Saints C E Primary School**

ARN	53945
ARN	53945
Name	Trinity All Saints C E Primary School
BudgetaryDepartment	Children's Services
BudgetaryService	Education & School Improvement
Tenure	Not Applicable
Status	Operational
AssetUse	School

**2 Asset Data - All: Trinity All Saints C E Primary School Playing Field**

ARN	00255
ARN	00255
Name	Trinity All Saints C E Primary School Playing Field
BudgetaryDepartment	Children's Services
BudgetaryService	Education & School Improvement
Tenure	Freehold
Status	Operational
AssetUse	School Playing Fields

**3 Asset Data - All: Myrtle Park Primary School**

ARN	02014
ARN	02014
Name	Myrtle Park Primary School
BudgetaryDepartment	Children's Services
BudgetaryService	Education & School Improvement
Tenure	Not Applicable
Status	Operational
AssetUse	School

**4 Asset Data - All: Beckfoot School**

ARN	00148
ARN	00148
Name	Beckfoot School
BudgetaryDepartment	Children's Services
BudgetaryService	Education & School Improvement

Tenure Freehold  
Status Non Operational  
AssetUse School

**5 Asset Data - All: St Joseph`s Catholic Primary School (Bingley)**

ARN 53943  
ARN 53943  
Name St Joseph`s Catholic Primary School (Bingley)  
BudgetaryDepartment Children`s Services  
BudgetaryService Education & School Improvement  
Tenure Not Applicable  
Status Operational  
AssetUse School

**6 Asset Data - All: St Joseph`s Catholic Primary School (Bingley) - Playing Field**

ARN 00387  
ARN 00387  
Name St Joseph`s Catholic Primary School (Bingley) - Playing Field  
BudgetaryDepartment Children`s Services  
BudgetaryService Education & School Improvement  
Tenure Freehold  
Status Operational  
AssetUse School Playing Fields

**7 Asset Data - All: Priestthorpe Primary School**

ARN 00344  
ARN 00344  
Name Priestthorpe Primary School  
BudgetaryDepartment Children`s Services  
BudgetaryService Education & School Improvement  
Tenure Freehold  
Status Operational  
AssetUse School

**8 Asset Data - All: Priestthorpe Primary School Playing Field**

ARN 00343  
ARN 00343  
Name Priestthorpe Primary School Playing Field  
BudgetaryDepartment Children`s Services  
BudgetaryService Education & School Improvement  
Tenure Freehold

Status Operational  
AssetUse School Playing Fields

**9 Asset Data - All: Trinity 5-Rise Children's Centre**

ARN 59327  
ARN 59327  
Name Trinity 5-Rise Children's Centre  
BudgetaryDepartment Children's Services  
BudgetaryService Education & School Improvement  
Tenure Not Applicable  
Status Operational  
AssetUse Family Centre

**10 Asset Data - All: Belgrave Road, 36 - Caretakers House**

ARN 59306  
ARN 59306  
Name Belgrave Road, 36 - Caretakers House  
BudgetaryDepartment Children's Services  
BudgetaryService Education & School Improvement  
Tenure Freehold  
Status Non Operational  
AssetUse Residential Property

**11 Asset Data - All: St Joseph's Catholic Primary School - Caretakers Bungalow**

ARN 50147  
ARN 50147  
Name St Joseph's Catholic Primary School - Caretakers Bungalow  
BudgetaryDepartment Children's Services  
BudgetaryService Education & School Improvement  
Tenure Freehold  
Status Operational  
AssetUse Residential Property

**Schools and Childrens Centres with no recorded CGIS CBMDC interest thus no CBMDC Asset.**

12 Hazelbeck School, Bingley, BD16 1EE

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