



# Local authorities as trustees – Commission guidance & tips



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FOR ENGLAND AND WALES

## Opening poll

What difficulties might a local authority as a trustee have?

Pick as many as you like:

1. Councillors need a proper understanding of charity law
2. The council must always obtain external legal advice on the decisions it makes as trustee
3. Councillors will be legally liable for decisions made as trustee
4. Understanding what separation of duties means
5. Raising funds for the charity
6. Identifying and managing a conflict of interest

# Session objectives

In this session we'll cover:

1. The basics of trusteeship
2. Knowing if you are a trustee
3. Separating the roles of council and trustee
4. Managing conflicts of interest (including when disposing of charity land)



# Basics of trusteeship



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# Basics of trusteeship

- Overall responsibility for the charity
- Comply with your trustee duties, such as:
  - acting in the charity's best interests
  - managing resources responsibly
  - furthering charity's purposes
- This presentation – is about the local authority itself being the trustee, not individuals (such as councillors)



# Knowing if you are a trustee



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## Local authorities - know where you are a trustee

- Lack of awareness of the role
- Issues stemming from lack of awareness e.g. using charitable property for council purposes; dormant funds
- Hold an asset register & clearly identify your charitable assets
- Submit your annual returns (and accounts) to the Commission



# Separation of your roles



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# Separating your trustee and statutory roles

- Councils that are trustees wear multiple hats – know you are acting as trustee
- Trustee decisions must comply with legal duties
- Choose the decision-making mechanism that best allows you to govern the charity
- Delegate operational work where necessary but the council remains responsible overall



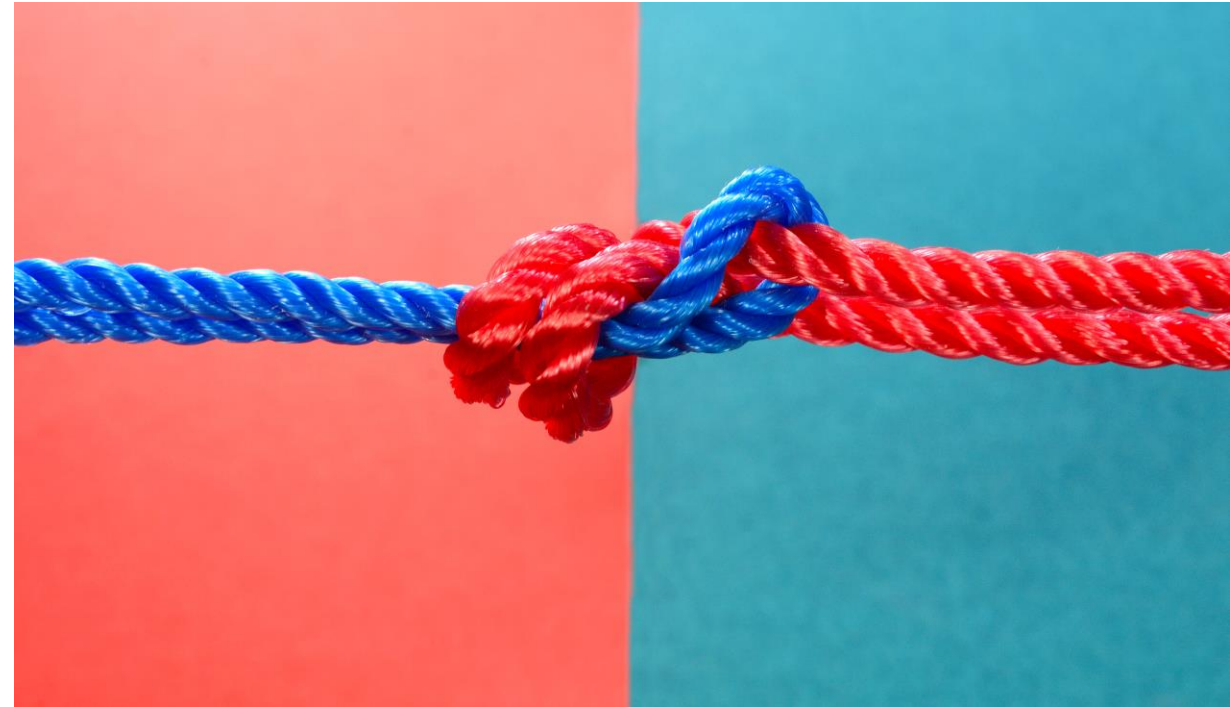
# Managing conflicts of interest



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## Conflicts of interest – where they arise

- Conflicts arise due to the multiple role of local authorities
- Have a conflicts of interest policy
- Identify when council may be conflicted
- Manage the conflict of interest



## Conflicts in disposing of land – a common issue

- Identify when decisions give rise to a conflict of interest
- Does the council stand to benefit? Is it party to the transaction?
- Assessing the decision from the perspective of the charity only
- Manage the conflict at the time that the decision is made



# LGA network - Commission guidance



Guidance

## Local authorities (or councils) as trustees of charities – a guide for councillors

Updated 8 August 2024

Guidance

## Selling, leasing or otherwise disposing of charity land in England and Wales

Updated 7 March 2024

Guidance

## Recreation ground charities: guidance for trustees

Guidance for trustees of recreation ground charities about issues relevant to them, including the management and disposal of the land.



Guidance

## Local authorities (or councils) as trustees of charities

Updated 8 August 2024

## 5 key takeaways

1. Understand that the council is trustee – have a list of charities / asset register
2. All decisions you make as trustee must be in the charity's best interests. Comply with the decision-making principles
3. Have a conflicts of interest policy for the charity. Identify and manage conflicts
4. Submit your charity's annual return (and accounts) to the Commission on time
5. Seek professional advice where necessary



**THANK YOU**



## Opening poll revisited

What difficulties might a local authority as a trustee have? Pick as many as you like:

1. Councillors need a proper understanding of charity law.
2. The council must always obtain external legal advice on the decisions it makes as trustee.
3. Councillors will be legally liable for decisions made as trustee.
4. Understanding what separation of duties means.
5. Raising funds for the charity.
6. Identifying and managing a conflict of interest.



## Case study 1 – Managing charity land

The local authority is trustee of a charity which comprises a building and gardens. It is generally regarded within the council and by local people as council property; the building is currently used as council office space. It needs some repair, and staff complain about it being too hot in the summer and too cold in the winter. The gardens are open to the public, and the council's parks and recreations team maintain it.

Which of these could be a regulatory issue for a local authority that is a trustee?

1. The council is not offering a reasonable working environment to the staff who work in the building.
2. The public can use the gardens, but too many are not aware of its existence.
3. The council's use of the building as office space.
4. The council using its funds to maintain the gardens.

## Case study 2 – Record keeping & reporting – inactive charities

A local authority is conducting a review of all of the assets under its management.

As part of this review the Council becomes aware of 3 assets that it holds on charitable trusts: an allotment, a public garden, and a small school prize fund.

What steps should the Council take next to ensure that its management and reporting of these charities is in keeping with charity law?