

The United Reformed Church

RESPONSIBILITY AS CHARITY TRUSTEES, AND RESPONSIBILITY FOR CHURCH LAND AND BUILDINGS

An Introduction for Ministers and Elders (November 2016)

1. Aim of this booklet

1.1. This booklet is for Ministers and Elders of local United Reformed Church congregations in England and Wales. It covers two main subjects: the role of Ministers and Elders (who together constitute Elders' Meetings) as charity trustees;¹ and the responsibility of managing and looking after church land and buildings. This booklet sets out some things that you need to know and do, and aims to help you to see these formal duties in a positive light.

1.2. As members of the Elders' Meeting you (the Minister and Elders of a local church) are also charity trustees of the local church's assets and funds.² This concern will be covered in the first half of the booklet.

1.3. However, the members of the Elders' Meeting are not normally charity trustees of the local church buildings – either church, or hall, or manse.³ In most of our local churches, the trustee of these buildings is your Synod Trust Company.⁴ However, much of the care and management of the buildings must be done locally. So, the second half of this booklet will explain some things to keep in mind as you use and look after these buildings.

2. What am I a charity trustee of?

2.1. The assets and funds that a local church holds for its religious work are called the local church charity. The local church is not a charity; the assets and funds it controls are a charity.⁵ The Charity Commission is concerned that these be administered properly. The Commission will not normally concern itself with the worship and fellowship of the local church. However, its role has recently been expanded to assure itself concerning compliance with various pieces of legislation, such as safeguarding; and local churches are therefore recommended to draw up appropriate policies (if they do not already have them) and advertise this on their website (if they have one).

2.2. The Charities Acts state that the people who have day-to-day general control of the administration and management of a charity are the charity trustees. They are responsible for how the charity is

¹ Occasionally, a Church Meeting will have made other arrangements than for the Elders' Meeting to act as charity trustees. This is not recommended, and this document assumes that it is the Elders' Meeting. The same duties and responsibilities apply in exactly the same way.

² Anyone legally disqualified from serving as a Trustee (such as under-18s, people currently bankrupt, people with certain criminal convictions) is still eligible for election as an Elder, but may not take part in those parts of an Elders' Meeting transacting Trustee's business.

³ It is possible that some of the individuals may happen to be such trustees in a different capacity, but that is unusual. See paragraph 9 for more information.

⁴ If you are unsure who are the trustees of the buildings, please contact the Synod Trust Company, through the Synod Office, who will be able to advise you.

⁵ The expression 'assets and funds' cover what belongs to and is held by the local church. In contrast the church building, its halls, and the manse, are held for the local church, but by different trustees, and upon trusts set out in the United Reformed Church Act 1972 (as amended by the Acts of 1981 and 2000). Some churches may hold other land or buildings such as houses, or commercial property variously acquired or given (or even burial grounds separated from the grounds of a church) as part of their assets and funds; but generally local church buildings are not part of the local church charity. If in doubt you should talk to your Trust Company or the appropriate Officer of your Synod.

conducted. This applies equally whether or not the charity is registered. This booklet assumes that the members of the Elders' Meeting are the charity trustees.

3. Registering local church charities

3.1. Up to now, only those local church charities having a yearly gross income exceeding £100,000 have to be registered, but the remaining local church charities will have to register in 2020 unless their gross yearly income is £5,000 or less.⁶ Those local church charities which are not yet registered are still charities, but are currently "excepted from registration".

3.2. This obligation to register does not change the role of Ministers and Elders, in controlling their local church charity. It does, however, make them more publicly accountable because the Commission Register is open to public view and accounts must be provided when required. This need not be a matter for anxiety. In general, Elders' Meetings already fulfill their duties in accordance with the law. If we act carefully and responsibly, within the scope of the object of the local church charity, which is to advance the Christian faith in accordance with the principles of the United Reformed Church, we need have no concerns.

4. The duties of charity trustees

4.1. As explained above, the qualified members of the Elders' Meeting (that is, the Minister and Elders of a local church, excepting anyone legally disqualified from serving as a charity trustee) are responsible and accountable for administering and managing the assets and funds of the local church. Each of them must do their part to ensure that the charity is well run, and that assets and funds are spent and used wisely to further the local church charity's charitable purposes, i.e. advancing the Christian faith in accordance with the principles of the United Reformed Church and in accordance with charity law.

4.2. Running the charity well includes three main commitments: compliance, prudence and care.

4.3. Compliance

4.3.1. The Elders' Meeting must ensure that, in dealing with the local church charity, they comply with charity law. They must also follow the rules and practices of the United Reformed Church, because the ultimate object of local church charities is to advance the Christian faith in accordance with the principles of the United Reformed Church.

4.3.2. They are required to prepare annual accounts and to report on their work. When a local church charity is registered, the Elders' Meeting will need to submit, or be ready to submit, their report and accounts and annual return to the Commission. Even if not yet registered, the Elders' Meeting are bound to supply copies of their accounts on request by members of the public (including Synod and/or Trust Officers) in accordance with the accountancy provisions of the Charities Acts.

4.3.3. The Charities Acts require all registered charities having a gross yearly income exceeding £10,000 to state that they are registered charities in official publications etc. It is recommended that you do this by including your charity name and registration number on all church publications, including letterheads, cheques, receipts, requests for funding, and all financial documents.

⁶ Unless the Government changes its policy regarding the registration of what are presently "excepted charities" such as church, scouts, guides and other such-like charities, they will be treated like all other charities and have to register if their gross yearly income exceeds the specified figure which presently is £5,000 .

4.4. Prudence

4.4.1. Elders' Meetings must ensure that their local church charity remains financially viable and able to carry on its charitable work. Each member of the Elders' Meeting must keep themselves aware of the financial position and of the present and proposed activities.

4.4.2. They must ensure that the assets and funds are used wisely and only to further the religious work of the local church.

4.4.3. They must avoid activities that might place the assets and funds, or the charity's reputation, at undue risk. They must take care when entering the political arena; there is Commission guidance about speaking out or campaigning at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/591353/CC9.pdf

4.5. Care

4.5.1. All members of Elders' Meetings must exercise reasonable care and skill in making decisions. An Elder who has personal knowledge, experience, or skills is expected to apply that extra talent. A rule of thumb is that trustees must exercise the level of care that a prudent businessperson would exercise in carrying on his or her own business.

4.5.2. They must take special care when investing funds or borrowing money, seeking professional advice where appropriate. Charity Commission guidance concerning investment of funds can be found at the link below. The booklet is CC14 – *Charities and investment matters: a guide for trustees* which can be ordered through Charity Commission Direct.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/581814/CC14_new.pdf

4.5.3. They must take, and consider carefully, proper professional advice on matters where there is substantial risk to the charity, or where they are in doubt whether they are able, in accordance with their trusts, to take a course of action they propose.

4.5.4. They must devote enough time to know what their local church is doing at any given time, and together conduct their business honestly, in good faith, independently and diligently; e.g., they must meet regularly and sufficiently often to make the decisions needed, with proper information.

4.5.5. They must adequately insure charity property,⁷ and insure against public liability and, where relevant, against employers' liability.

4.5.6. They must not benefit personally at the cost of their charity.

5. Good governance

5.1. Anyone should expect to see the following 'Hallmarks' in a local church charity which is conducted properly:⁸

5.1.1. Clarity about its purposes, mission and values with a clear intention of achieving them in all aspects of the activities.

5.1.2. Adoption of any necessary structures, policies and procedures to enable it to achieve its mission, aims and objectives.

5.1.3. An acceptance of sound governance as an important part of its stewardship and appropriate procedures in place to review governance.

5.1.4. Management and use of resources (including finance, skills, knowledge, experience and assets) in order to achieve its potential; also effective planning and budgeting with periodic review.

⁷ If the charity owns land and buildings as part of its general property, the trustees must either insure it themselves, or ensure that it is insured by the tenant. Local churches must insure their church buildings, halls, and manses even though these have separate trustees and are held on the statutory trusts set out in the United Reformed Church Acts.

⁸ Good governance is expected from all charities. The Charity Commission has issued a general guide which you can see here - <https://www.gov.uk/government/publications/charities-and-investment-matters-a-guide-for-trustees-cc14/charities-and-investment-matters-a-guide-for-trustees> and see also <https://www.gov.uk/government/publications/charity-trustee-meetings-15-questions-you-should-ask>

- 5.1.5. An acceptance of accountability and transparency as key values, and recognition that it is accountable to wider constituents.
- 5.1.6. Effective communication, explaining its activities and decisions in an open and transparent way whilst maintaining confidentiality where appropriate.
- 5.1.7. Flexibility to adapt to change appropriately. Avoidance of complacency. The effective Elders' Meeting will want to increase the local church's ability and effectiveness to meet its core objective of advancing the Christian faith.
- 5.1.8. The Elders' Meeting acting with integrity, and in accordance with the local church's values.

6. Potential liability of charity trustees (the members of the Elders' Meeting)

6.1. The Elders' Meeting are entitled to meet the local church charity's debts and liabilities out of its resources, provided that the Elders' Meeting have incurred them properly in conducting the church's business. Personal liability could only fall on the Elders' Meeting if they had failed to carry out their above duties to the local church charity.

6.2. If the Elders' Meeting acts honestly and exercises care, this should never happen. There have been no occasions that we know of where a United Reformed Church Elder has had to pay church debts out of his or her own pocket if they have acted with care and in good faith (honestly).

6.3. There are three possibilities where trouble might arise:

6.3.1. Where some or all members of the Elders' Meeting enter a contract with a third party, without having funds to pay the contractor;

6.3.2. Where there is no or insufficient insurance, and an accident occurs causing damage which has to be paid for;

6.3.3. Where a charity trustee acts contrary to the trust provisions and /or the purposes of the charity, and does something incurring cost which must be repaid, e.g. they wrongly benefit personally at the cost of the charity because they have no prior authority from the charity, court or the charity commission to have acted in this way.

6.4. However, in all three of these examples it can be seen that there has been a failure to comply with the basic rules set out above.

7. Trustee Indemnity Insurance

7.1. Local churches will find that some insurance policies include trustee indemnity insurance as standard. However, they would be well advised to check this, and to check the level of such cover. If members of the Elders' Meeting are unsure whether the church policy includes trustee indemnity insurance they should ask their insurer or their broker as a matter of urgency, and be certain what they are covered for. If they are still worried about personal liability, despite what is explained above, they should consult an Officer of their Synod or Trust company. They may ask the Church Meeting for permission to take out or increase trustee indemnity insurance, to cover them against any honest mistakes, so that they will not have to repay the charity e.g., if the charity trustees, acting reasonably and honestly (but mistakenly and wrongly), enter into a contract with a third party and pay him out of the funds of the charity, they will not have to repay the charity out of their own pockets if they can claim under the trustee indemnity insurance policy.

7.2. But please note that the insurer will not indemnify against third party claims:⁹ e.g. if there are no charity funds to pay the contractor, the insurer will not pay. Trustee indemnity insurance only pays out

⁹ Where it is reasonable to do so, **and if they can find a willing insurer**, charity trustees can insure the charity out of its funds against liabilities to third parties arising from acts properly undertaken in the administration of the charity.

to charity trustees in respect of claims against them by or on behalf of their charity, not contract claims by third parties or nuisance or negligence claims by victims (where there is no insurance cover to meet such claims).

8. Where can I get more information?

8.1. There are two places where you may want to look up more detailed information. One is the Charity Commission, which publishes various booklets of advice and guidance to charities and their trustees. The other is the United Reformed Church website, where you can find a draft constitution for local churches, if you do not currently have a constitution, or it requires updating or more formalizing.

8.2. The Charity Commission: There is a Charity Commission guide on trusteeship; it is their booklet number CC3 – ‘The Essential Trustee’. You can apply for a copy to Charity Commission Direct at PO Box 1227 Liverpool L69 3UG or telephone 0845 300 0218. Or find this on the internet at: www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3

8.3. The Commission also has a booklet discussing issues for faith-based charities, at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/355533/faithgovenglish.pdf

8.4. The constitutional documents of the United Reformed Church: the Basis of Unions (section A), the Structure of the United Reformed Church (section B), the Rules of Procedure (section C), and the URC Acts (section D) are contained, with other useful information in *The Manual*. The Basis of Union and the Structure of the United Reformed Church constitute the original ‘Scheme of Union’ (as amended from time to time since 1972) referred to in the United Reformed Church Acts. This is available on the United Reformed Church website: <http://www.urc.org.uk/the-urc-manual.html> or

go to the URC home page >Resources Library tab at the top of the page>the letter “M” button>The Manual at the beginning of the Resources List and click on the “Visit Resource” key.

8.5. In many congregations there have also been local decisions of the Church Meeting and Elders’ Meeting that shape the way the Elders operate;¹⁰ this is proper, as long as these decisions do not clash with the Scheme of Union. So, the ‘constitution’ of a local church consists of the Scheme, as adapted and affected by these local resolutions. In many cases it will not be easy to track down all these additional resolutions and if this is the case, your Church Meeting may wish to consider adopting the sample ‘local church constitution’ published on the United Reformed Church website.

8.6. Finally, you can always get advice from your Synod Office, whose staff have experience of formal rules and procedures, and will also have some understanding of your local situation.

¹⁰ For example, the method of electing Elders, and the length of their terms of service.

Churches and their buildings

9. Trusteeship of land and buildings

9.1. Although the Elders' Meeting will usually be in control of the day-to-day administration and management of the local church's funds, they are not usually trustees of the church's land and buildings.

¹¹ This is normally the responsibility of the Trust Company associated with the Synod, but may be a nominated group of individuals.¹²

10. 'The building's trustees'

10.1. The trustees of the buildings, whether the Trust Company associated with the Synod or some other group, are referred to below as 'the building's trustees', and have to keep constantly in mind that they are a different group, looking after different responsibilities, from the Elders and Synod.

11. Insurance, maintenance, repairs, improvements

11.1. The local church, either acting through a committee with delegated authority or through the Elders' Meeting itself, remains responsible for insuring its buildings, and also for maintaining them. The church should confirm with their insurers or brokers that the insurance policies explicitly record the interest of the building's trustees.¹³

11.2. Regular surveys of church premises are important in securing regular reports on the state of the buildings in order to prioritize repairs, and this is even more important for Listed Buildings¹⁴. Ideally each generation of members should 'leave the premises at least as good as they found them'. The local church is responsible for carrying out repairs and entering into contracts with builders etc. Minor routine maintenance needs no approval from the building's trustees, but larger work will require permission. The threshold for this varies among Synods, so you would be well advised to contact the appropriate Officer of your Synod or Trust Company to clarify at which point they need to become involved. Improvement of premises usually requires approval of Synod as well as that of the building's trustees, but they can only act if there is a Church Meeting resolution in favour of carrying out the work. The building's trustees will need to be assured that the church has sufficient resources in hand to complete the work. Some Trust Companies sign contracts themselves, while others do not, so check with the appropriate Officer of your Synod or Trust Company. If you are told that the building's trustees are not joining in the contract, care should be taken to ensure that these trustees do not become parties to the contracts: that must remain with the Elders' Meeting. The parties to the contract are legally liable for payments made under the contract and they make the payments from their church's funds. All this reinforces the importance of consultation with the Officers of the Synod Trust Company at the earliest opportunity, and throughout any works.

11.3. Substantial repair work and improvements may require permission from the Planning Authority. Also, in the case of listed buildings, Listed Buildings Consent will be required. Ecclesiastical Exemption allows Listed Buildings Consent to be given by the Synod, acting upon the advice of its Listed Buildings

¹¹ As mentioned previously, a local church may have land and even buildings which are not subject to the scheduled trusts. The trustees of such land and buildings may or may not be the people who from time to time are the members of the Elders' Meeting. Such property may be part of the general property of the local church or may be held on special trusts and if Ministers or Elders are not sure, they should speak with the appropriate Officers of their Synod or Trust Company.

¹² Individuals acting as building's trustees was common in 1972, but it carried risks of the church forgetting to keep the number up as trustees died or moved away, and of the trustees no longer having any sense of the needs of the local church. If there are still nominated trustees, they should serve for limited terms rather than for life, preferably with staggered terms so that the appointment of trustees becomes a regular item on the Elders' agenda. A good arrangement would be for six trustees to serve for six years (eligible for reappointment for one or two terms), with two retiring every other year.

¹³ Many local churches will find that this already is the case.

¹⁴ Inspections every 5 years

Advisory Committee. Ecclesiastical Exemption does not mean that the local church can decide for itself; it merely substitutes an ecclesiastical process for a Local Authority process. Applications may be refused. Furthermore, if a church is in a Conservation Area, the Local Authority may also have to be involved in relation to matters concerning the exterior of the building.

11.4. As well as Listed Buildings Consent and Planning Consent, a church needs to be aware of other Building Regulations, to which any work has to conform e.g. asbestos, health and safety, fire etc. Details may be obtained from the appropriate Officer of your Synod or Trust Company. Many of the church insurers also offer advice on their websites.

12. Occasional, intermittent or temporary use/hiring and Letting of buildings

12.1. Most churches will allow rooms to be used by outside organisations, or for private events, occasionally or regularly. Every time part of the church building is hired out in this way, a record should be made of the terms, and the payment made. There should still be a record if no payment is made. Many churches have standard terms and conditions for occasional use, and if these are set out on paper, the booking and payment may be signed by the hirer and the appropriate Officer of the local church who manages the occasional use of the premises for non-church events.

12.2. Regular users, e.g. of the same room at the same time each week, are not in principle problematic, provided that the local church retains a key to the room(s) concerned 'and actually enters the room regularly and keeps a note of the dates. Otherwise the courts might hold that this was really a lease, whatever the documentation said. The point here is not to establish a situation in which the hirer could claim 'exclusive use' of the room(s). If that were to be established, what is otherwise a 'licence' becomes a 'lease', which requires much more formality. It is recommended that 'licences' for use or hire of the premises be renewed annually. It should be noted that allowing a room in the church building or hall, or a house owned by the church, to be used for storage purposes (e.g. a food bank), will normally have to be a lease, because it normally involves 'exclusive use' of the area concerned. It is suggested that it would be good practice for a local church to review all use of church premises (both occasional/intermittent/temporary use and formal leases) annually.

12.3. A lease which usually involves permanent occupation of a room or rooms for a longer period, must be handled by the building's trustees, not by the local Elders' Meeting or Church Meeting alone. In any event, the URC Act gives only the building's trustees the legal right to enter into a lease.

12.4. Technically, the building's trustees control all occasional, intermittent, or temporary use of the premises, as described in paragraphs 12.1 and 12.2, as well as formal leases. For this reason they are now being encouraged to pass formal resolutions of delegation to local churches, to enable local churches to continue to control these occasional, intermittent, or temporary use themselves, as has hitherto been common practice. Such resolutions will be subject to the agreement of the relevant Church Meeting, and Synods are in the process of contacting local churches about this.

13. Sharing of buildings

13.1. The sharing of buildings with other churches can happen in one of three ways: (i) hirers, (ii) guests, (iii) through a formal and legal Sharing Agreement.

(i) Hirers – sometimes another church will make use of some part of the building in the same way, and on the same basis, as any other person by "licence", as in paragraphs 12.1 and 12.2.

(ii) Guests – sometimes the relationship is closer, and in practice operates in a less formal way, perhaps without payment. Although this is a warmer relationship, in legal terms it remains another party making use of some part of the building in the same way, and on the same basis, as any other person by "licence",

as in paragraphs 12.1 and 12.2.

(iii) Sharing Agreement – this can only be entered into by the building’s trustees. This applies both to formal Sharing Agreements with other denominations under the Sharing of Church Buildings Act, 1969; and also to less formal arrangements with denominations or groups, which are not registered for the purposes of that Act. The latter category includes many Orthodox Churches other than the Greek and Russian Orthodox Churches, and many Pentecostal or minority ethnic congregations. In either case there should be a written document setting out the terms.

13.2. Formal Sharing Agreements will normally incorporate a regular review period.¹⁵ Before entering such an agreement, which will involve the building’s trustees and the Synod, careful discussion should take place with the appropriate Officers of the Synod, who may involve their solicitors in drawing up the Agreement.

13.3. Less formal agreements, where a formal Sharing Agreement is not possible or desired, should also be carefully documented. The advice of the Officers of the Synod or Trust Company is essential. The resulting agreement is likely to be either a licence or a lease, as explained in paras 12.2 and 12.3 above, even if there is no formal rent payable – though a decision not to charge rent should be carefully thought through.¹⁶

13.4. In all cases, local churches should be prepared to report the use of premises by outside bodies as described in sections 12 and 13 of this booklet, to the building’s trustees, in the form and frequency as requested by the building’s trustees.

14. Partial or complete disposal of property

14.1. When a local church wants to sell or otherwise dispose of the whole or part of its building or manse, the Church Meeting needs to pass a resolution requesting the sale or other disposal of the building¹⁷, the Synod needs to approve, and then the building’s trustees can act. So, there are three parties to such transactions: Church Meeting, Synod, and the building’s trustees. However, the Synod may have particular policies in place about the circumstances in which it will give approval. Synod policies, however well-intentioned, can never override the statutory provisions of the trusts; nor can they be used as ‘bargaining counters’ for Synod approval. It is therefore important for the relevant officers to act in such a way that this never arises.

The United Reformed Church’s Scheduled Trusts make various distinctions in relation to the types of property that may be held in trust for a local church. The first distinction is between places used for religious worship and residences for ministers and other church workers. The actual differences are slight, but significant and therefore any proposals should be checked with the Officers of the Synod or Trust Company. The second distinction is between those situations when either the whole or part of the premises are sold with the intention of acquiring replacement land and buildings and those where such premises are sold for various kinds of development. Generally speaking, the Church Meeting has a more direct say in the former than the latter. In both cases the approval of the Synod for the transaction needs

¹⁵ They may involve forming a single-congregation Local Ecumenical Partnership, which usually involves disposing of one building, or they may be a looser agreement which does not entail the discontinuance of services in any of the buildings. There is a standard constitution, which such Local Ecumenical Partnerships are recommended to use since it makes registration with the Charity Commission easier. This constitution may be found on the Churches Together in England website. (The arrangements in Scotland are slightly different.)

¹⁶ Care should also be taken to protect the charity against any accusations of discrimination or bribery in the allocation of lettings. This is one reason for limiting the range of variation in the rents charged. If the local church wants to further its purposes by assisting a user group they may resolve to donate some or all of the rent paid back to any user group they wish to support/encourage.

¹⁷ There is a special procedure (paragraph 5 of the scheduled trusts) which enables a redundant building to be sold if there is no Church Meeting.

to be obtained. The handling of the sale or disposal falls to the Trust Company as trustee of the local church concerned. It is important that in such cases the directors of the company remember that they are acting as the trustee of the local church and therefore in its best interest, and not, if this is the case, as trustees of the funds of the Synod.¹⁸

In all cases, the best course of action is for Church Meetings, Synods, and the building's trustees, to consult with each other as fully and as early as possible. There are formal and legal resolutions which need to be passed in particular forms of words and at particular times, and the appropriate Officers of the Synod or Trust Company will provide advice.

14.2. In the case of sale after the closure of a church, it is important that the decisions are made in an orderly way – by Church Meeting, by the Synod, and by the building's trustees. This means that preparations for closure should be made in good time, and not at the last minute.¹⁹ An orderly succession of church officers, particularly those of Treasurer and of Church Secretary, is important, not least because closures can sometimes be precipitated by the unexpected death or moving away of key people in the congregation. Once a decision to close has been taken, and the date agreed for closure reached, the now former Elders' Meeting or Church Meeting have no involvement in any decision of the building's trustees about the sale of the property, though they may express a preference before the closure becomes effective. This should be included in the resolution to close.

¹⁸ At least one Synod has two Trust companies, one for the Synod funds and the other for local churches.

¹⁹ This is recognized to be a counsel of perfection; but even when matters have to be settled hurriedly, so far as possible the correct sequence of decision-making should be observed – Church Meeting, Synod (or delegated committee) and Trustee Company.