

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or meeting room at night. They are looking at laptops and appear to be in a collaborative meeting. The room has large windows showing a cityscape at night. The lighting is warm and focused on the people.

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Councils as Charity Trustees and Charity Land

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Charity trusteeship – the basics

- ChA 2011 s.177 “...*the persons having the general control and management of the administration of a charity.*”
- Charitable purposes/objects for the public benefit
- Comply with the governing document and the law
- Act in the charity's best interests

Case study: Sodor Town Hall

- Gift of land to **provide benefit for the people of Sodor**
- **Permitted uses of the Hall**
 - Town hall
 - Market place
 - Place to hold public meetings
 - Place where JPs, tax collectors and trustees of turnpike roads may sit.

Case study: Sodor Town Hall

- Designated land held for particular charitable purposes
- Used by the Council as its general offices
- This was in breach of the terms of the gift
- Not in furtherance of the objects
- No distinction between council land and charity land

Sodor Town Hall: key action points

1. Delegate the trustee function in relation to the Hall from the whole Council to a suitable sub-committee
2. Deal with accounting issues
3. Future use of the Hall?
4. Public Consultation
5. Cy-prés application

Options for the future use of the Hall

- Retain the building, amend the objects
- Appoint new trustees to take on the Hall
- Create a new charity or transfer to an existing charity
- Sell the building (but consider designated land issues, possible permanent endowment, the need for public consultation and how the proceeds of sale should be dealt with).

Cy-prés Doctrine

- Process by which the charitable purposes are altered by way of CC Scheme.
- Specific circumstances in which purposes can be altered (ChA 2011, s.62(1)).
- Other considerations:
 - Spirit of the original gift
 - New purposes to be close to the original purposes
 - Current social and economic circumstances

Disposal of Charity Land

- Do you have the power of sale?
- Is the disposal consistent with the duties of charity trustees?
- Statutory Regime in part 7 ChA 2011

Part 7 Statutory Regime

- Order of Charity Commission or of the Court; OR
- Comply with self-certification process in section 117-121 ChA 2011:
 - Obtain and consider a written report on the disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity
 - Advertise the proposed disposition for such period and in such a manner as advised in the surveyors report

Part 7 Statutory Regime

- Decide that they are satisfied, having considered the report, that the terms on which the disposition is proposed are made, are the best that can reasonably be obtained for the charity.
- Obligations are less on leases of not more than 7 years
- Section 117(3) exceptions
- Statements and certificates to be included in the documentation
- Changes under Charities Act 2022 – Spring 2023

Designated Land (or “Specie” Land)

- Land required to be used for a particular charitable purpose.
- Cannot be disposed of without complying with the public notice requirements in s121 ChA 2011
- Cy-pres scheme may still be needed if retention of the land is so fundamental to the purposes of the gift that it should be regarded as one of the original purposes.

Section 121 Charities Act 2011

- Trustees must:
 - Give public notice of proposed disposal inviting representations within a specified time
 - Time for responses cannot be less than 1 month from the date of the notice
 - Take into consideration any representations
 - Complete the consultation before exchanging contracts of completing the disposal

Exceptions

- The obligation to consult will not apply:
 - If the disposal is undertaken with a view to acquiring a replacement property to be held on the same trusts as the land being disposed of;
 - To a grant of a lease of 2 years or less with no lump sum or benefit being paid
 - If the Charity Commission give a direction that the obligation to advertise does not apply.

Sodor Town Hall: outcome

- Public consultation shaped the future of the Hall
- New CIO set up with suitable objects
- Cy prés scheme obtained for Sodor Town Hall
- CIO can pursue a wide range of funding sources
- Ultimately – the Hall provides **direct benefit** to the people of Sodor

Good Practice for Councils as charity trustees

- Understand the purposes, governing document and charity trustee role.
- Delegate the trustee function to a sub-committee.
- Terms of reference to determine scope of delegated powers/set out reserved matters.
- Ensure conflicts of interest and loyalty are properly managed.
- Ensure charity assets and income are dealt with separately.
- Manage the charity/building (insurances, repairs, staff).
- Review the purposes and governing document.
- **TAKE ACTION!**

Useful reading

- Local authorities as charity trustees
- Councillors' guide to a council's role as a charity trustee
- <https://www.gov.uk/government/publications/local-authorities-as-charity-trustees>



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Thank You

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