



# Village Halls governed by a Deed of Trust: How to incorporate and reorganise

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# Introduction

## What this Guide covers

The guidance aims to:

- Outline the governance structures applying to many village halls.
- Explain some of the problems and limitations which these structures can cause.
- Explain the process that village hall charity trustees should follow if they want to become a company or a SCIO.

## Who is this guidance for?

This guidance is for people who are advising village hall charities about incorporation as a Scottish Charitable Incorporated Organisation (SCIO) or a company; or making changes to their governing document.

## How to use the guidance

The guidance is split into three main parts:

**Part 1: The background and matters to consider**

**Part 2: Becoming a company or a SCIO**

**Part 3: Modernising the governing document**

Throughout the guidance certain terms are highlighted in **purple bold text**, these terms are explained in the **Glossary of Terms**.

There are case studies and examples of powers contained in many Deeds of Trust at the end of the guidance.

## Sources of help and advice

If you are a charity trustee of a village hall, we strongly advise you to get professional advice before making changes to the charity's structure. You can get advice from:

- **Third Sector Interface:** Each local authority area in Scotland has a Third Sector Interface, which provides support to voluntary organisations on a variety of topics including charity regulation.
- **Scottish Council for Voluntary Organisations (SCVO):** is a membership organisation for charities, community groups, social enterprises and voluntary organisation of all shapes and sizes from across the whole of Scotland.

# Part 1: The background and matters to consider

There are over 500 village halls registered as charities in Scotland.

Most manage, maintain and sometimes own (or hold **heritable title** to) a hall or building which may be used for a variety of educational and recreational purposes for the benefit of the local community.

Many of these charities have decided that they want their charity to be incorporated as a company or a **Scottish Charitable Incorporated Organisation (SCIO)**, as this limits the liability on individual trustees which could arise from managing a village hall. Others have decided they'd like to amend their **governing document**, which has become outdated.

It is good practice for **charity trustees** to explore these possibilities. However, the complicated way in which many village hall charities are constituted often means that the charity trustees do not have the power to make the changes they want and therefore have to apply to OSCR for a **reorganisation scheme**. This can be a complex process and most charity trustees will need some support and advice to be able to do it.

## How are village halls set up?

Different types of charities have different legal structures, and the type of legal structure which is right for a particular organisation depends on the activities and the level of risk involved.

## Unincorporated association or trust?

The majority of village hall charities were originally established by a

**Deed of Trust.** Many are constituted by a Model Trust Deed drawn up in the 1950's or 60's by the Scottish Council of Social Services (a forerunner of today's SCVO).

Typically, the deed **vests** the hall property in named trustees (the '**property trustees**') and also allows for the establishment of a Management Committee which is responsible for the general management and control of the Trust subjects (usually the hall).

In such cases, although the **Management Committee** is permitted to make Rules and Regulations, the Deed will usually state that no **Rules and Regulations** may be made which are inconsistent with Trust Deed.

Often, this has resulted in a scenario where the 'property trustees' and the Management Committee operate quite independently. In some cases the Management Committee are unaware that there are 'property trustees' or that the Committee of Management was originally established under the terms of a Trust Deed.

In such cases, OSCR regards the charity trustees as being the trustees who hold title to the property together with the Committee of Management who are responsible for the general management and control of the **Trust subjects** and the arrangements for their use. The original Trust Deed sees 'the property trustees' and 'the Management Committee' having a dual role in the management of the charity.



When we refer to the '**charity trustees**' from this point forward in the guidance, we are referring to both the property trustees and the management committee, who in some cases may be the same people.

The legal form of such a charity is a trust although in some cases errors may have been made at the time of first registration of the charity by the Inland Revenue, and its Register entry may be 'unincorporated association'.

## Part 2: Becoming a Company or SCIO

The majority of village hall charity trustees contacting OSCR do so because they'd like to incorporate to become a company or SCIO.

There might be various reasons for this:

- so that charity trustees can benefit from **limited liability**
- because certain funding streams (for instance from local authorities) are less likely to be available to village hall charities unless they are incorporated
- because a different type of legal structure could simplify management, regulation and accounting procedures
- the organisation might have staff and an incorporated structure could offer better protection.

Becoming a SCIO or a company will involve the charity trustees transferring the **assets and property** from the existing charity to a new charity. Ordinarily, this would also require the charity trustees to apply to OSCR for consent to wind up and dissolve the existing charity and transfer any remaining assets to the new incorporated charity. However, most village hall trust deeds do not give the charity trustees the power to wind up and dissolve.

In **Annexes**, we discuss factors that may be relevant in assessing whether charity trustees have particular powers.

**What if village hall charities don't have the power to make the changes?**

### Reorganisation Schemes

Charities that do not have the power to make changes can apply to OSCR for the authority to do so. Making such an application is referred



to as applying for a ‘**reorganisation scheme**’. The most relevant types of scheme for village hall charities are:

1. A scheme to transfer the charity’s property (after satisfaction of liabilities) to another charity and then wind up. For example where the charity trustees want to transfer the charity’s heritable property and other assets to another local charity or a new incorporated charity established for the purpose of receiving the assets and running the hall in the future.
2. A scheme to vary the charity’s constitution: for example to amend current provisions preventing them from making changes, or to introduce new provisions to enable them to make changes. Where the constitution is a Deed of Trust, this will involve drafting a Supplementary Deed or Deed of Variation.

For village hall charities which want to incorporate, the quickest and most straightforward way to achieve this will be to apply for a ‘transfer of the charity’s property to another charity’. Therefore, this guidance primarily deals with this particular type of reorganisation scheme. OSCR can approve such a transfer even where the charity’s governing document does not permit this - providing one of the reorganisation ‘conditions’ and ‘outcomes’ are met (see **Types of reorganisation schemes** in Part 3).

In this guidance we will assume that the charity trustees will want to set up a SCIO or a company to be the recipient of the existing charity’s property and assets. Therefore, before OSCR could approve such a reorganisation scheme, the charity trustees would need to establish the new charity which they want to transfer the assets to.

## Steps to Incorporation

- **STEP 1:** Before charity trustees apply to OSCR
- **STEP 2:** Setting up a company or SCIO
- **STEP 3:** Apply for Consent to Reorganise
- **STEP 4:** Transfer the assets/property to the recipient charity
- **STEP 5:** Notify OSCR

## STEP 1: Before charity trustees apply to OSCR

- a) Find out who holds title to the charity's property
- b) Find out if the property is held in trust
- c) Find out if the village hall was established by a Deed of Trust.
  - ✓ Do any of the charity trustees or professional advisors (accountant or lawyer) have a copy of the Trust Deed?
  - ✓ If not, does OSCR have a copy?
  - ✓ If the charity trustees know who set up the Trust, they may be able to obtain a copy of the Deed from **Registers of Scotland (Books of Council and Session)**, although Deeds would be filed under the name of the **Trustor** and not, for example the name of the village hall.
- d) Ensure all of the charity trustees agree to the application and proposed changes, **both those who hold title and the management committee.**

The Management Committee will be unable to proceed with the transfer of property unless they know who holds title to the property and can make sure these individuals have agreed to the reorganisation application and proposed transfer.

The Trust Deeds for many village hall charities will identify a number of persons in the **preamble** who are referred to as 'the Trustees', those who originally held title to the property.

For example:

'DEED OF TRUST MADE THE TWENTY EIGHTH OF FEBRUARY 1961 BY ROBERT GRAHAM JONES PRESENT PROPRIETOR OF THE LANDS AND ESTATE OF NEVERLAND, REVEREND GEORGE DAVIDSON PRESENT MINISTER OF THE PARISH CHURCH OF NEVERLAND, JIM TIMPSON SCHOOLMASTER SCHOOLHOUSE NEVERLAND, MISS LAURA DUFFY AND MISS FRANCINE DUFFY BOTH OF VALE COTTAGE ALL IN NEVERLAND IN THE

PARISH OF NEVERDALE AND COUNTY OF NEVERBURGH (THE PERSONS FOR TIME TO TIME ACTING HEREUNDER CALLED 'THE TRUSTEES').

These named individuals and their successors as Trustees hold title to the property.

Village Hall charities **may** have a clause such as the following in their Trust Deed:

'Vacancies in the office of Trustee shall be filled up by persons appointed by the Committee declaring that the number of Trustees shall at no time be less - than three. The Trustees themselves shall not have power to assume new Trustees'.

This clause enables the Management Committee to fill any vacancies in the office of Trustee: by that we mean one of the **property trustees**. For example, if two of the trustees who originally held title have died and replacements have not been appointed, the Management Committee may be able to appoint replacements.

### Other Considerations

Charity trustees should fully consider the implications of making changes. Charity trustees have a duty to act in the best interests of the charity and they should seek appropriate advice where necessary. Charity trustees should make themselves aware of all the potential consequences of the changes, which might include the following:

- Cost: conveyancing fees, solicitors fees, etc.
- Banking: banks are likely to require charity trustees to open a new account for the new incorporated charity.
- Changes to insurance.
- Dissolution of the old charity may trigger crystallisation of any pension deficit.
- HMRC registration.
- Conveyancing: ensuring **title** is legally transferred.

- Licences: transfers of licenses to the new incorporated charity.
- Other Regulators: if the charity is currently registered with any other regulator we recommend the charity trustees contact them to ensure that they comply with any requirements they have in relation to the proposed change.
- Membership: have the membership been consulted about the changes?
- Funders: will funding automatically transfer to new incorporated legal entity?
- Direct Debits: changes required if changing bank account.

Trustees should not proceed until they are satisfied that they have identified who holds title to the property, who **all** the current trustees are, and that all the trustees are in agreement with the proposal to transfer the assets to a new SCIO.

**We would strongly recommend that charity trustees seek additional advice at the outset before embarking on this process if there is any uncertainty over any of the potential issues highlighted above.**

## **STEP 2: Setting up a SCIO or company**

Charity trustees should complete an **online application form to become a charity** if they want to become a company or a SCIO.

Legislation requires that a SCIO's **governing document** must contain certain provisions. Therefore, we recommend village halls consider using a model SCIO governing document, such as **SCVO's model SCIO constitution**. Company law also requires that certain provisions are contained in the governing document so if the proposal is to become a company, we recommend village halls consider using a model such as **SCVO's model Articles of Association**.

There is further guidance on the SCIO legal form on **OSCR's website** and from **SCVO**.

Once OSCR has entered the company or SCIO on the Scottish Charity

Register, the charity trustees can move to Step 3.

### STEP 3: Apply for Consent to Reorganise

Download the [application form for consent to reorganise](#) from our website.

In order for OSCR to be able to approve an application for a reorganisation scheme, the applicant must satisfy OSCR that at least one of the [reorganisation 'conditions' and 'outcomes'](#) is met. Further details on what each of these conditions and outcomes means are in our [charity reorganisation guidance](#).

#### How long does a Reorganisation Application Take?

For charities with an annual income of less than £1,000 and which have no heritable property or shares in a private limited company, a simplified reorganisation process is available (at OSCR's discretion). If OSCR decides to apply the simplified process, OSCR must then make a decision within **13 weeks** of receiving the application.

If the charity **does** hold heritable property (e.g. a hall), the reorganisation process will take longer. OSCR is required to publish a summary of the proposed reorganisation on its website and members of the public are entitled to make representations, either in favour of or against the proposals. In these cases, OSCR is required to make a decision within 26 weeks of the closing date for receipt of representations from the public. A decision is likely to take around 6 months from the date of the original application.

At the end of this guidance, we have included some [case studies](#) of village hall charities which have applied to OSCR for a reorganisation scheme for a transfer of the property of the charity to another charity.

### STEP 4: Transfer the assets/property to the recipient charity

Firstly, charity trustees should be aware that it's possible that OSCR will refuse consent to a reorganisation scheme if we are not content that a reorganisation **condition and outcome** are satisfied. However, if we do approve a reorganisation scheme for a transfer of the charity's property to another charity, the next steps are set out below.

If the approved scheme is for a transfer of the charity's property, the charity trustees can go ahead and transfer all of the charity's assets to the other charity. The result of this is that the original charity is wound up.

### Transferring Title

OSCR's approval of the application for consent to reorganise does not make the transfer happen. Where the charity's assets include heritable property (the hall itself), the charity trustees are still required to make sure this is legally transferred to the recipient charity. In order for a transfer to be legally effective the title has to be formally re-registered in the new charity name (this is known as a conveyance and the charity trustees should instruct a property solicitor to carry this out). OSCR will require evidence that the transfer has taken place.

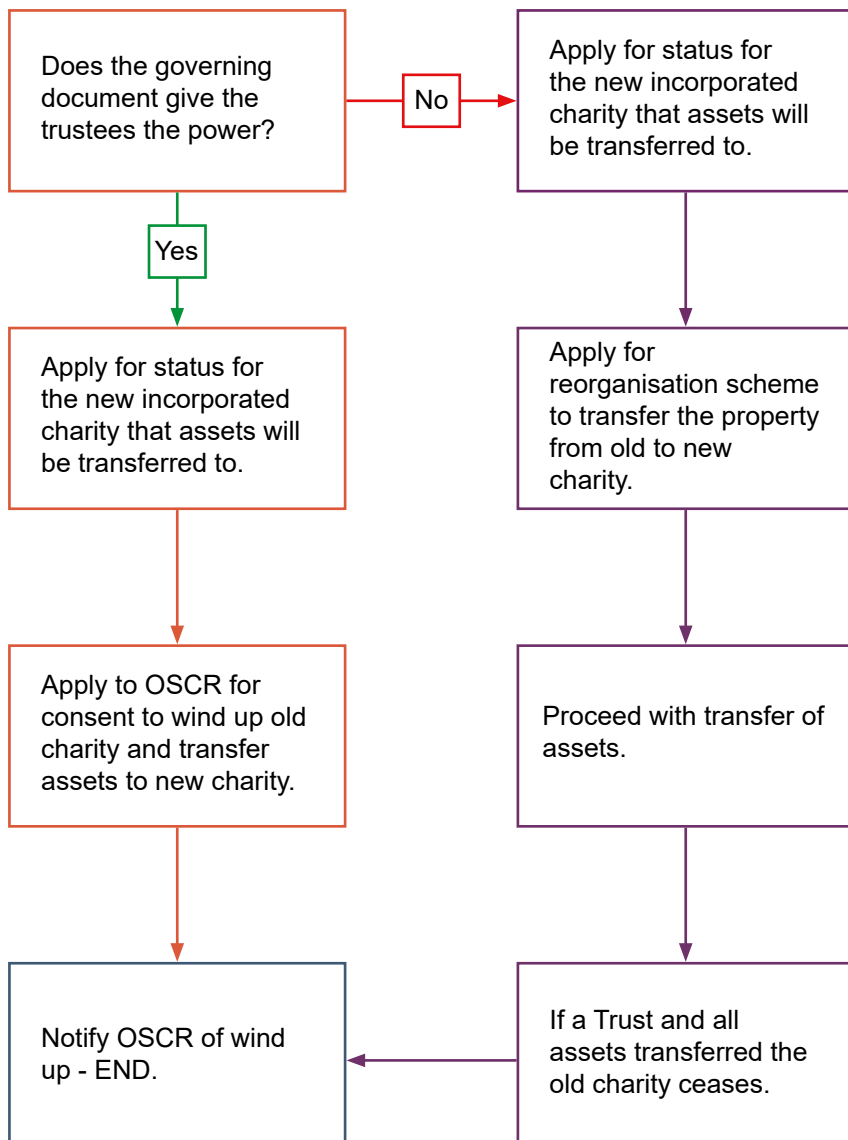
The charity must be able to identify who holds title to the property or else they will be unable to give effect to the reorganisation.

### STEP 5: Notify OSCR

OSCR will normally request evidence that all of the assets have been transferred. Such evidence might typically include final accounts, evidence of receipt from the new charity, **disposition (of heritable property)**.

Once OSCR is satisfied that the evidence is in order and that the 'old' charity has no remaining assets, we will remove it from the Scottish Charity Register.

## Simplified process: transfer the charity's assets and property to a SCIO or company



## Part 3: Modernising the governing document

Many village hall charities approach OSCR with enquiries about changing or updating their **governing document**. Those governed by a Trust Deed often suggest it is outdated, unwieldy, or no longer reflects how the charity operates or would like to operate. Examples of the kinds of changes village hall charities seek are:

- changing the charity's purposes
- amending or adding procedures for appointing charity trustees
- giving the charity trustees extra powers (for example the power to dissolve or to make changes to the governing document in future)
- changing procedure for calling and making decisions at meetings
- changing requirement to have accounts audited.

However, charity trustees can only make amendments to the governing document where they have the **power** to do so. Many village hall charities that were originally established by a **Deed of Trust** have found that the charity trustees do not have the power to make any changes to the terms of the deed. In which case they need to apply to **OSCR to reorganise**. The type of reorganisation scheme which would be applicable would be a scheme for a 'variation of the governing document of the charity (whether or not in relation to its purposes)'.

Charity trustees considering applying for this type of reorganisation scheme should be aware of the following:

1. They can only vary the terms of their existing constitution, so where a village hall is a trust, it will still be a trust following the reorganisation, albeit with a varied Deed of Trust as its constitution.
2. An application to vary the constitution must be accompanied by a draft version of the revised constitution. In the case of a Trust, this would involve the charity trustees providing



a legally competent draft Deed of Amendment or Supplementary Deed of Trust along with the reorganisation application. We would recommend that charity trustees obtain professional advice to assist in drafting this document.

3. Village halls considering incorporating in the future would need to ensure that the amendments they make to the constitution include giving themselves the power to wind up the Trust and transfer its assets to another charity.
4. To incorporate, the charity trustees would then need to apply for charitable status for a new company or SCIO (the proposed recipient of the assets) and once status was awarded, apply to OSCR for consent to wind up the Trust.

So, although applying for a reorganisation scheme to vary the constitution can give the charity the powers it would require if the charity trustees were seeking to incorporate, this route involves more steps and is likely to take longer than it would have if the charity trustees applied for a reorganisation scheme for a transfer of the property of the charity to another charity.

## Types of reorganisation schemes

Charities must meet at least one condition and at least one outcome.

This is set out in detail in the table on the next page.

## Conditions

## Outcomes

A i 'That some or all of the purposes of the charity have been fulfilled as far as possible or adequately provided for by other means'.

ii 'That some or all of the purposes of the charity can no longer be given effect to (whether or not in accordance with the directions or spirit of its constitution)'

iii 'That some or all of the purposes of the charity have ceased to be charitable purposes.'

iv 'That some or all of the purposes of the charity have ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its constitution'.

B 'That the purposes of the charity provide a use for only part of its property'.

Where the condition satisfied is that set out in A or B opposite, the outcome **MUST** be that the reorganisation scheme will enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution having regard to changes in social and economic conditions since it was constituted.

C 'That a provision of the charity's constitution (other than a provision setting out the charity's purposes) can no longer be given effect to or is otherwise no longer desirable'.

D 'That it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's constitution.'

Where the condition satisfied is that set out in C or D opposite, the outcome **MUST** be that the reorganisation scheme will enable the charity to be administered more effectively.

# Glossary of Terms

<b>Assets</b>	This means everything a charity owns; property, money, equipment, including heritable property (such as land and buildings and rights attached to it).
<b>Assignment (of a lease)</b>	A title document whereby all rights that a lessee or tenant possesses over a property are transferred to another party.
<b>Books of Council and Session</b>	A public register of deeds held by the Keeper of the Registers of Scotland in which a wide variety of deeds may be registered.
<b>Charity Trustees</b>	The persons having the general control and management of the administration of a charity. Where the governing document is a trust deed which appoints trustees <b>and</b> establishes a Management Committee, both the trustees and the Management Committee are likely to be regarded as the charity trustees.
<b>Company Limited by Guarantee</b>	A company is a membership organisation formed and registered under the provisions of the Companies Acts. It is incorporated and benefits from limited liability for its members.
<b>Disposition</b>	Formal document transferring ownership, or "title", to the land.
<b>Dispose</b>	Used in relation to land, this word means to transfer ownership.
<b>Ex officio trustee</b>	A trustee appointed by virtue of his or her position or status.

<b>Governing document</b>	A legal term defined in section 106 of the 2005 Act: Articles of Association (for companies); Trust Deed (for Trusts) an enactment which establishes and/or states a charity's purposes (for a charity established by enactment); the Royal charter or warrant (in relation to a charity established by Royal charter or warrant); the definition given in section 50 of the 2005 Act, (in relation to a SCIO); or the instrument which established the charity or body and states its purposes (any other charity or body).
<b>Heritable Title</b>	Heritable title to property is essentially the ownership of land, and other rights and interests relating to land.
<b>Limited Liability</b>	Limited liability is where a person's financial liability is limited to a fixed sum, most commonly the value of a person's investment in a company or partnership.
<b>Management Committee</b>	Those responsible for the day to day management and control of the trusts subjects.
<b>Preamble</b>	The introductory part of a statute or deed, stating its purpose, aims, and justification.
<b>Property Trustees</b>	The legal owners of the heritable property, where it is held in trust.
<b>Register of Sasines</b>	A chronological list of land deeds, which contain written descriptions of properties, held by the Keeper of the Registers of Scotland (pre-dates the Land Register).

## Reorganisation conditions

These are the criteria that must be satisfied in order for OSCR to approve a reorganisation scheme. They describe the difficulties experienced that the charity's trustees want to address.

Chapter 5 of the 2005 Act:

'(a) that some or all of the purposes of the charity—

(i) have been fulfilled as far as possible or adequately provided for by other means,

(ii) can no longer be given effect to (whether or not in accordance with the directions or spirit of its governing document),

(iii) have ceased to be charitable purposes, or

(iv) have ceased in any other way to provide a suitable and effective method of using its property, having regard to the spirit of its governing document,

(b) that the purposes of the charity provide a use for only part of its property,

(c) that a provision of the charity's governing document (other than a provision setting out the charity's purposes) can no longer be given effect to or is otherwise no longer desirable

(d) that it is desirable to introduce a provision (other than a provision setting out a new purpose) to a charity's governing document.'

<p><b>Reorganisation Outcomes</b></p>	<p>Reorganisation outcomes are closely tied to the condition that is met. Reorganisation outcomes are what reorganisation as a whole must achieve.</p> <p><b>Chapter 5 of the 2005 Act:</b> That the proposed reorganisation will: '(i) where the condition satisfied is that set out in paragraph (a) or (b) above, enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its governing document, having regard to changes in social and economic conditions since it was constituted, or (ii) where the condition satisfied is that set out in paragraph (c) or (d), enable the charity to be administered more effectively.'</p>
<p><b>Reorganisation Scheme</b></p>	<p>A process which enables charities that do not have the power to make changes to obtain the power, by application to OSCR.</p>
<p><b>Rules and Regulations</b></p>	<p>A set of rules which set out how the charity trustees must manage the affairs of the charity.</p>
<p><b>SCIO</b></p>	<p>The Scottish Charitable Incorporated Organisation is a legal form unique to Scottish charities and is able to enter into contracts, employ staff, incur debts, own property, sue and be sued.</p> <p>For more information see the <b>SCIO guidance</b> on our website.</p>
<p><b>Supplemental Deed of Trust</b></p>	<p>A document which sits alongside the original Trust Deed but which may modify and restate the provisions of the Trust.</p>

<b>Title Deed</b>	Formal document transferring ownership, or "title", to the land.
<b>Trust</b>	A trust is usually set up where assets (e.g. property, investments) are given by one person (the Donor) to another (the Trustees) with the intention that it should be applied for the benefit of a third party or the public (the Beneficiary). Once this occurs, the trustees own the asset, but can only apply it in accordance with the trust for the benefit of the beneficiaries.
<b>Trustor</b>	The trustor or "grantor" of a trust is the person who creates the trust by giving property to the trustees for the benefit of third party beneficiaries.
<b>Trust Deed</b>	The governing document of a Trust.
<b>Trust Property/Trust subjects</b>	Assets held by trustees for a beneficiary/beneficiaries.
<b>Unincorporated Association</b>	A voluntary or unincorporated association is a group of people who have decided to work together to accomplish a common agreed non-commercial purpose, such as a club, society, local group or community association.
<b>Vests</b>	Settles or confers property, power, or rights on somebody. Title to a property vests in trustees in accordance with the terms of the trust deed.

## Annex 1 - common dissolution clause

'If the Committee decide by a majority at any time that on the ground of expense or otherwise it is necessary or advisable to discontinue the use of the Trust subjects in whole or in part for the purposes herein mentioned they shall call a meeting of the inhabitants of the age of eighteen years and upwards in the said District of which meeting not less than Fourteen days' notice shall be given by posting a copy of the notice containing a copy of the proposed Resolution to be moved in a conspicuous place or places on the Trust subjects and by advertising in a newspaper circulating in the said District and if such decision shall be confirmed by a majority of such inhabitants present at such meeting and voting the Trustees may, subject to the consent of the Secretary of State for Scotland (or the Scottish Council of Social Service on his behalf) let or sell the Trust subjects or any part thereof and all monies arising from such letting or sale (after satisfaction of any liabilities properly payable thereout) shall be applied either in the hire or purchase of other subjects approved by the Committee and be held upon trust for the purposes and subject to the provisions hereinbefore written or as near thereto as circumstances will permit or towards such other charitable purposes or objects for the benefit of the inhabitants of the said District as may be approved by the Secretary of State for Scotland (or the Scottish Council of Social Service on his behalf) and in the interval such monies shall be invested in the name of the Trustees and any income arising there from shall either be accumulated (for such time as may be allowed by law) by investing the same and the resulting income thereof in like manner as an addition to and to be applied as the capital of such investments or shall be used for any purpose for which the income of the Trust subjects may properly be applied'.



## Annex 2 - How do trustees know if they have the Power?

For charities which are Trusts, there are several factors which may be relevant in assessing whether trustees have particular powers. However, this is a difficult and contentious area of law and is frequently a source of uncertainty because trust deeds may be capable of different interpretations. If in any doubt, trustees should seek independent (legal) advice to establish whether they have the power to take a certain action or make a particular change.

The trustees' powers will consist firstly of all of the powers which are set out in the trust deed. Additionally, legislation (primarily sections 3 and 4 of the Trusts (Scotland) Act 1921) provides certain additional powers: but only where these do not conflict with the purposes of the trust and only subject to any other legal obligations.

In addition, trustees have power to do acts of "ordinary administration". Therefore, for example, trustees may draw up rules for the running of the charity which describe how meetings will be held and decisions taken. They may vary any administrative sections of the trust deed. Where a trust deed gives trustees wide discretion in respect of a particular matter, other similar and related powers may be assumed, i.e. if a trust deed states that "trustees shall have complete discretion in applying the trust fund to any of the beneficiaries", then it would be reasonable to assume that unless otherwise stated the time and place and manner of making such payments is a matter for the trustees' discretion

Where discretion is given more generally, for example a deed states that "trustees shall do anything and everything which may in their uncontrolled discretion seem to them to be probably or possibly helpful to the purpose of the Trust", it would be reasonable to assume powers to do almost anything including varying terms as long as these remained consistent with the original purposes. **It would not be reasonable to assume a power to dissolve the trust or alter the purposes.**

# Powers - Example 1

A village hall applied to OSCR for consent to wind up and transfer its assets to a similar charity in the area which was a SCIO. OSCR can only consent to a charity winding up if the charity's governing document gives the charity trustees the power to take the action they propose.

In this case, although the trust deed gave the trustees the power to let or sell the Trust subjects, it also specifically stated that any monies arising from such letting or sale "shall be applied either in the hire or purchase of other subjects approved by the committee and be held upon trust for the purposes and subject to the provisions hereinbefore written or as near thereto as circumstances will permit or towards such other charitable purposes or objects for the benefit of the inhabitants of the said district".

Therefore, the proposal to transfer all assets of the hall to another charity was not permitted because the clause in the Trust Deed which the trustees thought gave them the power to transfer and dissolve actually required any capital to remain within the existing trust even where the current hall was sold and new charitable purposes are chosen. The trustees therefore did not have the power to transfer the assets and property, or wind up the Trust.

The 'dissolution clause' in this charity's trust deed was one that is replicated in the Trust Deeds governing many village hall charities. Although termed a 'dissolution clause', it does not actually allow the charity to dissolve! We have included the content of this clause at **Annex 1**. If a Trust Deed contains this clause, the trustees do NOT have the power to wind up or transfer the charity's property to another charity.

## Powers - Example 2

The model trust deed adopted by many village hall charities contains the following 'Amendment' clause:

**'These presents may be amended by a Resolution of a majority of the Trustees then acting if Government legislation is passed at any time necessitating such amendment'**

Some village halls have queried whether the introduction of the 2005 Act and the availability of the SCIO would be regarded as government legislation necessitating certain amendments to the constitution- for example the power to wind up. The introduction of the 2005 Act might have made such changes 'desirable', but would not make them necessary.

Therefore, village halls cannot rely on this clause to give them the power to change the dissolution provisions.

As many village halls are governed by a Deed of Trust which will have been drawn up many years ago, they often find that the provisions contained in the Deed are outdated and unnecessarily restrictive. However, we also typically find that trustees are very limited in the changes they can make to the Deed because they can only make changes which the founding document (and Trust law) give them the power to.

**Charity trustees should also be aware that changing the content of the constitution usually involves drafting a competent legal document, normally a deed of variation or supplementary deed of trust. Even where it is possible to amend the deed of trust, the end result will still be that the charity's legal form is a trust.**

# Case Study 1

## **What changes did the charity want to make?**

To wind up and transfer their assets (including the hall itself) to a new incorporated charity with similar objectives.

## **What were the issues?**

The charity's constitution was a by a Deed of Trust dated 1876, which was thoroughly out of date and did not give the trustees the power to dissolve or transfer the assets to another charity. Trustees can only carry out actions permitted by their constitution.

## **What was the proposed solution?**

To seek OSCR's approval to transfer charity assets to the new incorporated charity and then wind up.

## **What type of reorganisation scheme did they apply for?**

For 'transfer of the property of the charity (after satisfaction of any liabilities) to another charity'.

## **Which reorganisation conditions were met?**

That 'some or all of the purposes of the charity have been fulfilled as far as possible or adequately provided for by other means'.

The trustees suggested that this condition was met because the proposed recipient charity would be able to provide recreational and meeting facilities in the hall and provide space for educational activities for all inhabitants of the community, particularly young people. The trustees also considered that the purposes had been fulfilled as far as possible because it no longer had the funds or income to keep and maintain the building "in a complete state of repair, both externally and internally and insured against damage or loss" as laid down in the founding document.

**Which reorganisation outcome was met?** The charity reorganisation would 'enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted'.

The charity was having difficulty identifying and appointing suitable trustees as a number of the trustees were appointed on an ex-officio basis and it was proving difficult to persuade the successors to these posts to take up position as trustee. It was also proving difficult to recruit other trustees, particularly in view of the condition of the hall and potential personal liability which could arise for trustees. A new charity had therefore been set up as a SCIO with the express aim of taking over ownership of the hall. The SCIO was formed on the advice of various potential funders, with refurbishment estimates and plans ready.

The hall was not generating enough income from rent to provide for the upkeep and maintenance of the hall. The hall was in need of repair and the constitution did not give the trustees the power to raise funds to make the necessary repairs. The trustees had been unable to access any funding to help towards these costs as title to the hall was held in the names of the trustees. The SCIO structure would enable the proposed beneficiary charity to apply for funding towards the costs of essential and required maintenance. The transfer would also result in the charity's assets being administered by a newly formed organisation benefitting from a modern governance structure and updated constitution.

### **What happened next?**

The application was approved, and all assets were transferred to the new SCIO, resulting in the 'old' charity being wound up.

# Case Study 2

## **What changes did the charity want to make?**

To wind up and transfer their assets (including the hall itself) to another charity operating in the village.

## **What were the issues?**

The charity's constitution (Trust Deed) did not give the trustees the power to dissolve or transfer the assets to another charity. Trustees can only carry out actions permitted by their constitution.

## **What was the proposed solution?**

To seek OSCR's approval to transfer charity assets to the other charity and then wind up.

## **What type of reorganisation scheme did they apply for?**

For a 'transfer of the property of the charity (after satisfaction of any liabilities) to another charity'.

## **Which reorganisation conditions were met?**

That 'some or all of the purposes of the charity can no longer be given effect to'.

The applicant suggested that the language of the Trust Deed in setting out its purposes was antiquated and could not reasonably be regarded as reflecting the current use of the hall, nor the activities of a modern charity operating for the benefit of its community in the provision of a village hall. The purposes no longer described the charity's activities, and if they were strictly adhered to, the needs of the community would not be best served. As a consequence the hall might fall into disuse.

## **Which reorganisation outcome was met?**

The charity reorganisation would 'enable the resources of the charity to be applied to better effect for charitable purposes consistently with the spirit of its constitution, having regard to changes in social and economic conditions since it was constituted'.

The trustees felt the reorganisation would result in better use of limited resources, as there was no need for two similar charities within the village, particularly as they had shared directors/committee members. Also, from a practical point of view the aims and aspirations of both were so similar that in the majority of cases there was no need for a separate decision making process. Similarly there were not enough people to sustain both separately.

The trustees suggested that the proposed recipient charity shared their values and the reorganisation would result in many advantages. The recipient's purposes were up-to-date and relevant, its area of benefit was similar to their own having been expanded to incorporate the growth of the village; it reflected current legislation (the Land Reform Act) which has enabled the community to purchase land; it allowed sufficient time for the creation of accurate accounts and allowed the trustees to update the constitution if circumstances so required.

### **What happened next?**

Although OSCR approved the reorganisation scheme, the charity trustees have (to date) not yet transferred the property. Initially, they found it difficult to identify who actually held title to the hall, as the trust deed referred to ex-officio positions which no longer existed. Most of the management committee lost interest in taking this forward, leaving responsibility for the transfer with one individual.

### **Learning Point**

Where the reorganisation scheme is for a transfer of the charity's property to another charity, OSCR's approval of the scheme does not make the transfer happen. The charity trustees will still be responsible for finding out who holds title to the property and ensuring it is legally transferred. Charity trustees should investigate this before applying for such a reorganisation scheme.

# Notes



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The Scottish Charity Regulator (OSCR)  
2nd Floor  
Quadrant House  
9 Riverside Drive  
Dundee  
DD14NY

T 01382 220446  
E [info@oscr.org.uk](mailto:info@oscr.org.uk)  
 [@ScotCharityReg](https://twitter.com/ScotCharityReg)  
 [ScottishCharityRegulator](https://www.facebook.com/ScottishCharityRegulator)  
[www.oscr.org.uk](http://www.oscr.org.uk)

This content in booklet was published in October 2016. There was a slight amendment in May 2019 to reflect the online application for charitable status on pg.12.