

Drafting your Trust Deed

A clause by clause commentary

Once you are clear about the key features to be reflected in the structure, you can then turn your attention to the detail.

What follows is a clause-by-clause commentary on the model trust deed. For many clauses, you will want to leave the wording as it stands and the comments are really intended only to explain what the clause is there for. In the case of other clauses, there are decisions to be made as between alternative possibilities.

Preliminary Paragraphs

The people who are setting up the trust (who may or may not be included in the trustees) should be named immediately after the word “We”. It is important that the full name (including all middle names) of each individual is given, along with their address. In certain cases, it might be a corporate body which is creating the trust, in which case the full name and address of the corporate body should be inserted. There is no minimum number of people (or bodies) who can set up a trust. It would be perfectly possible for a single individual to be named as the party setting up the trust. See comments in [‘the name of your organisation’](#)

Normally the people setting up the trust will also serve as the first trustees – but if that is not so, the reference in paragraph (One) to appointing “ourselves” as trustees should be altered. If further people (over and above those who are creating the trust) are to be appointed as trustees, then the full name and address of each of those people should be inserted in paragraph (One). If the people setting up the trust are the same people as will serve as the first trustees (i.e. without any others), the reference to other names and addresses in paragraph (One) should be deleted. A minimum of three trustees must be named.

With reference to paragraph (Two), the sum of £1 is simply a nominal amount to show that the trust starts off with at least something for the trustees to hold in trust. It would be best to leave that as a reference to £1 rather than inserting a more substantial amount or listing particular property which was being given to the trustees.

Notes on specific clauses

1. See comments in [‘the objects of your organisation’](#)
3. It is often useful, particularly in a case where the need to obtain charitable status limits the type of wording which can be used in clause 1, to set out a brief outline here in paragraph (a) of the main activities which the trust will be carrying on in practice.

The remainder of clause 3 sets out a range of powers which will be appropriate for most trusts. The steering group may feel that there is no immediate prospect of certain of the powers being used in practice. Nevertheless it is usually best to keep the full set of powers, rather than delete items from the list - in case the power is needed at a future date. You should bear in mind that including reference to a particular power does not mean that the trust **has to** exercise that power in practice. For example, the fact that clause 3 includes a power to accept donations does not in any way force the trust to accept a gift in the future where the trustees felt that this would be inappropriate in the circumstances for ethical or other reasons.

It should be borne in mind that it might be necessary in some cases to add in some further powers to clause 3.
4. See comments under the heading of [‘The composition of your management committee’](#). It should be noted that the minimum number of 3 trustees reflects a legal requirement; the minimum number may be stated as a higher figure, but should not be stated as something less than 3.
11. If any of the trustees are based outside the UK, this clause would need to be amended.
12. It could be stated that the chairperson of the meeting would *not* have a casting vote.
13. A figure has to be stated in relation to the quorum for meetings of the trustees. A balance has to be struck between the objective of ensuring that decisions are not being taken by a very small number of trustees on the one hand, and, on the other hand, not paralysing the trust through being unable to take valid decisions because of difficulties in gathering a quorum. The proposed figure for the quorum should be compared against the figure which has been decided upon in relation to the maximum number of trustees; importantly, though, it should also be reviewed against people’s expectations with regard to how many people are likely to be in office as trustees at any given time, and the likely level of turnout.
21. It would be very unusual in a voluntary sector context to allow for the possibility of paying trustees for carrying out their ordinary duties as

trustees or allowing employees of the trust to serve as trustees. It is possible that [OSCR](#) would be prepared to accept an arrangement whereby a key employee of the trust also served as a trustee – but that would be exceptional, and would have to be justifiable by reference to improving the management and administration of the trust. It should also be borne in mind that many grant funders would not provide support to a trust if one of the trustees was an employee of the trust.

27. It is useful to pin down in the trust deed the arrangements which are to apply in relation to bank/building society accounts – in particular, the principle that the signing of cheques should involve the signature of at least one trustee, as one of a number of internal financial controls which should be maintained at all times.
29. This clause would be of more relevance in the case of a trust which has specific beneficiaries - in that it could, in these circumstances, provide some protection for the trustees against claims by the beneficiaries. If that is not the case, then the trustees should not assume that the wording would necessarily give them protection against liabilities under the general law.
30. The provisions within clause 30 are included as a general guide to the duties which apply under the new charities legislation. It may be appropriate to omit (or modify) the provisions within this clause if the trust does not intend to apply for registration as a charity.
- 31&32. If the trust itself is not a charity, then it would be possible to provide that the assets on a winding-up could be transferred to a non-charitable body i.e. the word “charitable” could be deleted; in that event, clause 32 would be omitted.