CONSTITUTION & ETHICS COMMITTEE

The Committee's Role Where the Council Acts as Charity Trustee or Appointing Body

When acting as charity trustee, the Council must consider the matter from the charity's perspective and make decisions which put the charity's best interests first

1. Role as a charitable trustee

The Constitution and Ethics Committee is responsible for matters relating to the Council's role as a charitable trustee. This may include cases where the Council is trustee of a charity or trust, is the recipient of a bequest, or holds property or assets on trust. It also includes matters where there may be a conflict between the Council's own interests and the interests of the charity, trust or bequest.

The Committee may also deal with appointments where the Council nominates or appoints an individual to serve as trustee of an independent charity. Such trustees act independently and owe their duties to the charity, not to the Council.

2. What does it mean for the Council to be a charity trustee?

The Council may hold land, buildings, money or other assets not for its ordinary Council purposes, but for a particular charitable purpose. Examples may include recreation grounds, playing fields, public gardens, cultural or civic buildings, war memorials, or small charitable funds and bequests.

Where the Council is the trustee, the trustee is usually the Council itself, not individual councillors personally. Members of the Committee are therefore helping the Council make decisions properly in its trustee capacity.

In contrast, where persons are appointed as trustee following nomination by the Council, they are the trustees and not the Council.

3. The main trustee duties

The Charity Commission summarises the main duties of charity trustees as follows:

- ensure the charity carries out its purposes for the public benefit;
- comply with the charity's governing document and the law;
- act in the charity's best interests;
- manage the charity's resources responsibly;
- act with reasonable care and skill; and
- ensure the charity is accountable.

4. What sort of matters may come before the Committee?

- Whether charitable land or property is being used in accordance with its purpose.
- Whether the use of a charitable asset can be changed.

- Whether charity land or property should be sold, leased, transferred or otherwise disposed of.
- How a charitable fund, trust or bequest should be managed or applied (including but not limited to the making of charitable grants, gifts, etc).
- Whether a conflict exists between the Council's interests and the charity's interests.
- Whether Charity Commission advice, consent or authority is needed.
- Whether charity records, accounts and decisions are being kept properly and separately where required.
- Decisions on recommendations proposed by the Council for specified individuals to be appointed as charity trustee of independent charities

In all cases, implementation will depend on the relevant charity's governing documents and may also require the approval of any other trustees, the Charity Commission, or other professional advice where appropriate.

CHECKLIST FOR COMMITTEE MEMBERS:

Question	What members should be satisfied about
What are we dealing with?	The charity, trust, bequest, land, property, fund, beneficiaries and any proposed appointee have been clearly identified.
What is its purpose?	The relevant governing document, trust deed, conveyance, bequest or Charity Commission document has been considered.
Who is meant to benefit?	The intended beneficiaries or public benefit are clear.
Is the proposal within the charity's purposes?	Charity assets must be used to support the purposes for which the charity was established.
Is the proposal in the charity's best interests?	The matter has been considered from the charity's perspective, not just the Council's perspective. Also whether there is a duty on the part of the Council to consider the issue at hand.
Is there a conflict of interest?	Any separate Council role or benefit has been identified, such as landowner, employee, funder, service provider or planning authority.
Has any conflict been managed?	The proposed approach to managing the conflict is clear; if it cannot be managed, Charity Commission authority may be needed.
Is there enough information?	Members have the legal, financial, property, valuation, consultation or Charity Commission advice needed to decide. Also, whether affected persons have undertaken

Question	What members should be satisfied about
	appropriate due diligence and sought legal advice as appropriate.
Is Charity Commission authority needed?	This includes but is not limited to proposals for land disposals, changes of purpose, significant conflicts or transactions involving the Council itself.
Will the decision be clearly recorded?	The record should show the decision taken by the Committee including where the Council acted as charity trustee, what information was considered, any conflicts identified, and why the decision was in the charity's best interests.
Are any charitable funds being properly safeguarded?	The funds are separately identifiable, properly recorded, applied only for the charity's purposes, and held, deposited or invested securely and appropriately.

Simple test: Has the matter been considered from the charity's perspective, and can the Committee explain why the decision is in the charity's best interests?

Source note: Prepared with reference to Charity Commission guidance, including "The essential trustee" and "Local authorities (or councils) as trustees of charities", and the Constitution and Ethics Committee's terms of reference.

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