



CHARITY COMMISSION
FOR ENGLAND AND WALES

Elizabeth Cunningham-Doyle
By e-mail to
Elizabeth.Cunningham-
Doyle@oldham.gov.uk

Charity Commission
PO Box 211
Bootle
L20 7YX

T: 0300 065 1805

Your ref:
Our ref: C-469965

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Dear Elizabeth

Former Werneth Youth Centre

Thank you for taking the time to speak with me earlier.

As you noted it is important to recognise and properly deal with the conflicts of interests that arise from the Council's dual role as local authority and charity trustee. Trustees should familiarise themselves with our guidance "[It's your decision: charity trustees and decision making \(CC27\)](#)" which sets out principles to help trustees meet their duties when making decisions about their charities. They should also familiarise themselves with "[Conflicts of interest: a guide for charity trustees \(CC29\)](#)".

I have, as promised, set out some guidance below on the process for applying for a scheme.

Overview

In altering the purpose of a charity by scheme, the steps to be followed are set out in the Charities Act 2011. In summary, it is necessary to:

- firstly, identify the circumstances that make it necessary to alter the present purpose(s) and ensure they meet the criteria for making a scheme; and
- secondly, consider the similar purpose(s) that the charity should now have – that is, the use to which the charity's property might now be put.

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When this has been done, it is necessary to:

- consult with stakeholders and consider the results (if this has not already been done) and make any necessary modification to the proposals;
- pass a resolution at a meeting of the trustees to formally apply for the scheme;
- consider the draft that we then prepare (if we agree to make a scheme); and
- arrange to publish a notice of our intention to make the scheme (if we think this is necessary).

In making their decisions, the trustees should ensure they follow our [decision-making guidance](#).

1. Demonstrating the criteria for making a scheme have been met

In order to provide a scheme, we must be satisfied that the criteria for making a scheme to alter the purposes of the charity have been met. These criteria are known as 'cy pres occasions' and are set out in s.62 of the Charities Act 2011.

Section 4.2 of the following guidance explains the circumstances in which we can make a scheme to change a charity's objects. [Changing your charity's governing document](#)

More detailed guidance can be found in our [Operational Guidance - Cy pres](#)

In this case we are satisfied that the criteria have been met. We understand the property is no longer suitable for the original purposes due to structural problems and the trustee does not have funds to repair the property. In addition we are told there is no longer the need for a school for teaching housewifery and other domestic subjects as required by the existing trusts.

2. Deciding the new purposes/objects

Because the criteria for making a scheme have been met, we can make a scheme to provide new purposes of a similar nature. When deciding on the new purposes, we have to consider:

- The spirit of the original gift;
- The desirability of providing new purposes that are close to the original; and
- The necessity for the new purposes to be suitable and effective in light of current social and economic circumstances.

Please set out what the trustees think the new purposes should be and explain how they relate to the three considerations above. Please provide minutes of the meeting at which these matters were considered and concluded.

3. Consultation

As section B4.2 of the following guidance explains, we expect trustees to have carried out appropriate consultation to help inform their decision-making regarding whether any of the criteria

for making a scheme have been met and, if so, what new purposes are appropriate. The consultation would need to be appropriate to the situation.

[Guidance on Scheme consultation](#)

Please provide details of what consultation has been carried out and a summary of any responses received. Please explain how this has helped inform the trustees' decision-making, both regarding whether the criteria for making a scheme has been met, and what the proposed new purposes should be.

If consultation has not yet been carried out, we would ask the trustees to conduct a suitable consultation exercise before proceeding with the scheme application.

4. Formal application for a scheme

The trustees must make a formal decision to apply for a scheme at a properly constituted meeting of the charity. This decision must be recorded in the charity's records (eg minute book). When this has been done, please email us the following confirmation:

"I declare that:

- The charity has formally made a decision to apply for a scheme.
- The meeting was held on [insert date].
- The meeting was quorate.
- All trustees are aware that this application is being made. [delete if not appropriate]"

If any trustee was not at the meeting and is not aware of this decision, they must be told. Please therefore ensure that this is done and confirm this to us.

5. Drafting the scheme and public notice

If we are satisfied that the criteria for making a scheme have been met and the other necessary information has been provided, we will consider drafting a scheme.

Before authorising the scheme, we may require public notice of the scheme as it will be authorising the sale of designated land. However, to enable us to confirm this, please answer the following questions:

- Are the trustees aware of any opposition to the proposals/draft scheme?
- Do the trustees believe the scheme will be controversial?
- Have any objections been raised to the proposals? (if yes, please provide details and explain how the trustees have taken account of these objections).

It is important that we are made aware of the likely reaction to the scheme or any potential objections. In the event that we discover that the scheme was opposed (and therefore should have been publicised) it might have to be cancelled

6. Power of sale

The scheme will need to include a power of sale to enable the trustees to sell the land. The sale will need to comply with the requirements of part 7 of the Charities Act 2011. The following guidance provides more information about these requirements: [CC28 - Disposing of charity land](#)

In particular, as the land is designated land, one of the requirements is that the trustees must give public notice of the sale and invite representations (this is different to any public notice given of the scheme itself). Section E8 of the guidance provides more information.

7. Proceeds of sale

The proceeds of sale will be permanent endowment. This means that only the income obtained from the proceeds (eg through investment) will be available to further the new objects of the charity.

If the trustees would like to be able to spend the proceeds, rather than just the income, please set out why the trustees believe this would be expedient in the interests of the charity. In doing this, the trustees will need to explain:

- how spending the proceeds of sale is consistent with the spirit of the original gift; and
- why being able to spend the permanent endowment itself, rather than just the income, would allow the charity to carry out its new purposes more effectively.

We can then consider releasing the permanent endowment restriction in the scheme.

Alternatively, if, after the scheme is authorised and the land sold, the trustees believe it would be in the charity's best interests to release the permanent endowment restriction, they could apply to us then. Further information about this process is available on our website: [Spending permanent endowment](#)

8. Summary and next steps

In summary, if the trustees think that the criteria for a scheme to alter the charity's objects have been met, please:

- Set out the trustees' proposed new purposes, bearing in mind the three considerations set out in section 2 of this letter and provide the minutes of the meeting which set out the trustees reasoning and conclusions.
- Provide details of the consultation carried out, including a summary of the responses, and explain how this has informed the trustees' decision-making.
- Formally apply for the scheme (see section 4 of this letter).
- Answer the questions regarding public notice in section 5 of this letter.

- If the trustees would like to release the permanent endowment restriction, explain how this would be expedient in the interests of the charity (see section 7 of this letter).]

Yours sincerely

Tim Reese
cscorres1@charitycommission.gsi.gov.uk