

Prepared by Miss L Dawson, Clerk to Fleggburgh Parish Council


Prepared on Friday 18th August 2023

A report to clarify the position of Fleggburgh Parish Council as Custodian Trustee of the Fleggburgh Village Hall and Playing Field.

Below is a letter from the Charity Commission dated 30 August 1996, clarifying that the Parish Council is the Custodian Trustee, this is based on the "Deed of Trust" or Conveyance dated 1947. This situation has not changed.

This illustrates that the Parish Council does not own the Village Hall. The managing committee have ownership and are responsible and liable for the running of the charity and all decision-making related to it. The custodian trustee (Fleggburgh Parish Council) has no part in this; their one role is to hold the title documents/deeds in trust for the life of the charity and provide them if requested. Professional advice has been sought with regard to the Parish council and committee of managements responsibilities, and VAT.

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Charity Commission, St Alban's House, 57/60 Haymarket, London, SW1Y 4QX

Direct Line 0171 210 } 4436
GTN 210 }
Fax 0171 210 } 4454
GTN 210 }

Mr A K Buckel
South View
Rollesby Road
Fleggburgh
Norfolk
NR29 3AQ

Our Ref: RM 303951/50755-CD Ldn
Your Ref:
Date: 30 August 1996

Dear Mr Buckel,

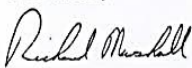
CHARITY: FLEGGBURGH VILLAGE HALL AND PLAYING FIELD- Reg. No. 303951

Thank you for your letter of 16 August.

Under section 97 of the Charities Act 1993, the trustees of a charity are 'the persons having the general control and management of the administration of a charity'. In the case of this charity that is the Management Committee, as provided for in the charity's governing document, the Conveyance dated 11th October 1947. The Parish Council are the Custodian Trustee (or holding trustee), in that the charity's property is vested in the Council and they should hold all the securities and documents of title relating to the charity's property. The Custodian Trustee has no power in the administration and management of the charity and must act at the direction of the managing trustees, unless they consider that to do so would be a breach of trust.

I am enclosing a copy of our leaflet CC3, a full version of the leaflet on the responsibilities of charity trustees, for your information.

I hope that this is of help to you.

Yours sincerely

Richard Marshall

When replying, please quote our reference.
For further information telephone 0171 210 4454

What is a Custodian Trustee?

Helpful Link:

<https://www.communityactionnorfolk.org.uk/sites/content/know-your-trustees-custodian-trustees>

Many charities, keen to resume their activities and functions as effectively as possible, are planning ahead for cautious resumption of service delivery as the Coronavirus lockdown eases. Here at CAN we are receiving a steady stream of enquiries from trustees for whom the situation has prompted some uncertainty about their precise roles as trustees. 'Trustee' is often seen as a generic word – but It's not.

There are four distinct categories of trustee, each with a specific range of responsibilities and obligations.

- Custodian
- [Sole](#)
- [Holding](#)
- [Managing](#)

And it's helpful to know what the lines of demarcation are between what trustees are and are not empowered to do.

So this is the first in a series of articles looking in detail at each category of trustee. We'll start with:

Custodian Trustees

Unincorporated charities do not have their own legal identity. They 'borrow' the legal identities of their trustees to enter into contracts and to own assets. When an unincorporated charity owns property or land it might appoint a Custodian Trustee to hold the title deeds on their behalf in perpetuity. The Custodian Trustee is a corporate body, such as a Parish Council or the Official Custodian of Charities. Whilst the Custodian Trustee holds the title to all property on behalf of the charity, it does not take part in the day-to-day management and operation of the charity.

So the Custodian Trustee owns the property?

No. The property is owned by the charity. The Custodian Trustee functions as a sort of long-term 'safety box'. It means the charity's Managing Trustees can change over time without having to worry about changing the title deeds.

Is the Custodian Trustee in charge then?

Again no. The Managing Trustees (they will have a later article all to themselves) are responsible and liable for the running of the charity and decision-making. The Custodian Trustee has no part in this; their one role is to hold on to those title documents for the life of the charity, and provide them if requested.

What powers do Custodian Trustees have?

- Custodianship of the property title – note that the Managing Trustees have right of access to study or copy the documents
- Furnishing the documents as required by the Management Trustees to, for example, sell or add to the property.
- Depending on the charity's governing document, they might be able to appoint new Managing Trustees; this is uncommon however

- They can charge for their services. Parish Councils tend not to do this.

Issues that we get asked about

Q. Our Parish Council is specified as the Custodian Trustee. Where do our trustees representing other charities fit in?

- A representative trustee from the Parish Council could be appointed (If the governing document allows) - but the Custodian Trustee has no say in the management of the charity. The Parish Councillor attending would be there as a Managing Trustee, not as anything to do with the Custodian Trusteeship.
- Any trustee, whether elected or representative, should only be operating in the interests of the charity. Sometimes, representative trustees feel they are there to represent the voice of another group or organisation. This is not so. Their 'other' organisation might have an interest in the charity; for example, a village hall might have representative trustees from groups that regularly hire the premises – but those trustees should concentrate only on the interests of the charity. You need a conflict of interest policy to clarify and manage this.

Q. We're 'just' the management committee. Doesn't the Custodian Trustee hold liability and responsibility?

- No. The Managing Trustees are responsible for management of the charity's assets and property. As an Unincorporated Charity the Managing Trustees are singularly and collectively liable and responsible for the charity and its assets.
- Some charities wish to move towards Charitable Incorporated Organisation (CIO) status, limits liability by according the charity its own legal identity. And that means you no longer need a Custodian Trustee! CAN's Community Development Officers are very experienced in advising on that process; give us a call.
- Unincorporated charities should have a Trustee Indemnity / Liability Insurance Policy.

Q. Our charity profile on the Charity Commission Register has the name of the Custodian Trustee listed. Does this mean we are not trustees?

- It's a simple mistake. The only names should be the Managing Trustees who have been appointed in accordance with the governing document. It could be that the corporate body listed is a 'sole trustee' (and we'll talk about them in a later article). Again, our Community Development team can help clarify that for you!

I HAVE TAKEN ADVISE FROM COMMUNITY ACTION NORFOLK:

Good Morning Lolly,

Thank you for your email. Ahead of your upcoming meeting this is what I can tell you from the governing document that you sent in.

Just to also confirm to you this governing document dated 11th October 1947 is the official document that is registered against the charity with the Charity Commission.

What it does confirm, and you are correct! The Parish Council are the Custodian Trustees for the charity. The first page of the document shows the agreement of the sale from the landowner to the Parish Council as Trustees. This is to be held on Trust, as the general management and control of the trust was then vested in the committee of management, which is set out in the first schedule, items one and two.

This means the Parish Council are purely Custodians for the charity. They hold the title deeds for the charity as they are an unincorporated charity and due to their structure cannot hold these themselves. BUT it means the Parish Council **do not own** the property the charity are the owners. You are correct though when you state that the PC register this as an asset but at a nil -value, this is because you are holding the title deeds on behalf of the charity. The PC does not have any say over the running of the charity, or if anything should happen to the charity.

The committee of management are the owners of the hall, and they are responsible for the running of the charity. You will have seen the committee of management is made up of 14 Elected members, 7 Representatives which are appointed by organisations in schedule 2 and may have up to 5 co-opted members too. As a PC you will have seen you can appoint a person to be a Representative Trustee, but this does mean that the individual is there as a trustee to further the objects of the charity and not those of the PC.

If the management committee needs further guidance we would be more than happy to guide them and they can also refer to article on management committees: <https://www.communityactionnorfolk.org.uk/sites/content/know-your-trustees-%E2%80%93-managing-trustees>

This should hopefully cover those questions you had but you are very welcome to come back to me if there is anything else.

Kind Regards

Tonya Winsley

Community Development Worker



Community Action Norfolk
Ambassador Way, Greens Road
Dereham, Norfolk NR203TL
Tel 01362 698216

Web [communityactionnorfolk.org.uk](https://www.communityactionnorfolk.org.uk)

Interested in [Membership benefits?](#)

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Company Limited by Guarantee Registered in England and Wales

I HAVE ALSO APPROACHED HMRC REGARDING VAT:

Hi Lolly

Further from our telephone conversation, I can confirm the following.

The Village Hall is a separate entity as it is not owned by the council. This means that it is not deemed a section 33 public body and is not seen as part of a local authority.

The village hall is not an eligible body to claim vat back via the VAT 126 process.

The Village Hall cannot ask the council to reclaim the VAT on costs incurred by them.

I have attached a link to VAT notice 749 below.

[Local authorities and similar bodies \(VAT Notice 749\) - GOV.UK \(www.gov.uk\)](#)

In section 4.2 you can clearly see that the village hall is not deemed to be an eligible body to claim.

In section 6.1 you can see the 4 fundamental rules of reclaiming the VAT incurred.

Also see section 10.

Section 10.3 clearly states the following:

- we treat a hall as being owned by a local authority if it's the sole managing trustee, but not if it's sole custodian trustee only

This clearly explains that you cannot claim the VAT back if you do not own the Village Hall.

Please see the link below with regards to your status of repaying the wrongfully claim VAT.

[How to correct VAT errors and make adjustments or claims \(VAT Notice 700/45\) - GOV.UK \(www.gov.uk\)](#)

Just to conclude, please do not claim for anything with regards to the village hall as you are not responsible for the hall because you do not own it.

Claiming for entities that are not eligible and placing orders on their behalf so you can reclaim the VAT back is VAT fraud. This can carry heavy penalties and in some cases may lead to a custodial sentence.

Any questions please do not hesitate to contact me.

Kind regards,

Wahkhas Khalid

Wahkhas Khalid | VAT Tax Specialist | Local Authority and Education Team | Public Bodies | Charities, Public Bodies and Complex Employment | Wealthy and Mid-Sized Business Compliance

Sector Mail Box: Please note wmbchfeselector@hmrc.gov.uk should be used as the main recipient for all email correspondence. No emails should be sent directly to an individual's email address as this may result in your reply being delayed.

Office address: WMBC | CPCE | Public Bodies Group | HMRC | 3 Arena Central | Bridge Street | Birmingham | B1 2AX

Postal address: HMRC | WMBC, Public Bodies Group | S0987 Newcastle | NE98 1ZZ

✉: wahkhas.khalid@hmrc.gov.uk

FURTHER INFORMATION

Currently the land and village hall is not registered with the land registry. I would recommend this exercise is undertaken.

If the registration goes ahead with the Parish Council as Custodian Trustee they would hold the deeds on behalf of the owners, the charity.

An option for trustees to consider would be to become a CIC (Community Interest Company) or CIO (Community Interest Organisation). As an incorporated organisation the charity would then be able to hold their own deeds in their own name. This has the additional benefit of limiting trustees liabilities, similar to a limited company.