

### **Trusteeship of local church property and funds**

1. This Note explains trusteeship arrangements applying to local church property and funds; it also draws attention to some of the responsibilities of trustees.

#### **Charity regulation**

2. Every charity has trustees responsible for its operation in accordance with its constitution. Every local church is a charity. Local churches in England and Wales, like all other charities, are subject to the regulatory jurisdiction of the Charity Commission. However, unlike many other charities, local churches with property vested in a specialist company such as URC Thames North Trust ("TNT" or "the Trust") are "excepted charities" which do not have to be registered with the Charity Commission. Consequently churches cannot give a registration number when requested in their dealings with other organisations. It is sometimes useful to be able to quote the statutory authority for this in dealings with other organisations. It is the Charities (Exception from Registration) Regulations 1996 (Statutory Instrument 1996 No 180) as amended by the Charities (Exception from Registration) (Amendment) Regulations 2007 (SI 2007 No 2655). The exception applies until 1 October 2012, but it is expected that excepted charities with an annual gross income over £100,000 will have to register with the Charity Commission from 1 January 2009.

#### **Trustees**

3. Every charity has trustees, and may have different kinds of trustee. The operational responsibility lies with "charity trustees" or "managing trustees," who are the people with "the general control and management of the administration of a charity". The charity trustees may be assisted by a "custodian trustee" or "holding trustee" who handles formal legal transactions, in response to instructions from managing trustees and subject to compliance with other legal requirements. Distinctions apply in respect of the property and funds of each local church. A fuller description of the respective responsibilities is provided in a paper distributed by Thames North Synod in November 2006 entitled "Local churches and their Trustees" (attached for reference).

- The members of the elders meeting are the charity trustee of the local church.
- Legal ownership of property, and sometimes investments, is vested in TNT on behalf of the church; it acts at the church's request subject to the procedures required by the URC property trusts (see Guidance Note 3) and general charity law. No one body has sole responsibility and the carrying out of the purposes of these trusts is a collaborative exercise.
- As a general guide,
 

the elders' meeting	recommends
the church meeting	resolves
the synod	approves
the trustees (TNT)	implement.

#### **Property (land and buildings)**

4. When property is bought, sold or let by a charity, all trustees are required to sign the relevant documents. If the trustees are individuals there should always be at least two, and it

is necessary to make new appointments as people resign or die. The appointment process involves legal and other formalities and some expense.

5. It has become common practice for church charities to appoint as trustee of their land and buildings a company (which has an indefinite life) which has official recognition as a "trust corporation". A trust corporation may act as sole trustee of property, but is not prevented from acting jointly with other trustees. TNT is such a company. Appointing a trust corporation as trustee makes no difference to the trusts under which property or investments are held.

6. TNT acts in response to decisions of church meeting subject to Synod approval when necessary and compliance with other legal requirements. The day to day responsibility for property rests with the local church through the elders' meeting or other people delegated by the church meeting to manage property matters. The local church arranges for the running, maintenance (major and minor) and insurance of the property.

### **Funds**

7. Some financial resources of a local church may be held by the trustees of its property. If the resources have derived from the sale or long lease of land and buildings, standard property trusts apply, and the role of charity trustee is shared by TNT and the elders' meeting as described above. TNT will usually look to the local church to take the initiative in dealing with investments. For any other investments, the role of TNT is as custodian and it is usually able to act in response to instructions from the local church without Synod involvement. Some considerations relating to the choice of investments by the local church are outlined in Guidance Note 9. Arrangements for the release of capital or income held by TNT are described in Guidance Note 10.

8. The day to day flow of income to the local church (from offertories, special efforts, users of premises, etc) and expenditure (Ministry and Mission Fund, worship costs, building running and maintenance costs, etc) are also matters for the local church. Although the detailed work is handled by the church treasurer, the elders' meeting (or other people delegated by the church meeting to deal with financial matters) is the "charity trustee" of the funds of the local church, including resources in the custody of corporate trustees of the property.

9. Consequently the elders' meeting should receive regular reports on the financial position of the church, and take such action as may be necessary to resolve difficulties. Annual accounts should be presented to the church meeting. Their form should comply with relevant requirements of charity law and should include a report on the accounts by (in most instances) an "independent examiner". Guidance on accounting requirements applying to local churches was issued by the United Reformed Church in 2006.

### **Responsibilities of charity trustees**

10. When stated fully and formally, responsibilities of charity trustees under law may seem onerous to people acting as trustee. In reality, responsibilities are a distillation of proper and prudent conduct of an enterprise, in accordance with its terms of reference and having regard to long-term as well as short-term considerations. Finances should be controlled and recorded appropriately. Income should be used for the purposes for which it is received; buildings are to be maintained in good condition, and insured adequately. Investments should be made in funds authorised for charities, monitored, and professional advice sought as necessary.

11. A more comprehensive description of responsibilities and potential personal liability of individual trustees (should the charity suffer loss from unauthorised or imprudent actions or become insolvent) is provided by the Charity Commission's pamphlet CC3 "The Essential

Trustee" (and an overview in CC3(a)). Pamphlets are available from the Charity Commission on request: telephone 0845 300 0218. They may also be viewed and printed from the Commission's internet site: [www.charitycommission.gov.uk/publication](http://www.charitycommission.gov.uk/publication).