

SALC Village Hall briefing 16th May 2018

Briefing was given by Robert Horn at SALC's Claydon facility. Robert is currently Community Project Officer at www.groundwork.org.uk, Ipswich. 01473 350371. robert.horn@groundwork.org.uk He described himself as having had 30yrs experience of working with Community Charity Organisations. There was 2.5hrs of discussion , examples, and group exercise. I have boiled it all down into the salient points below.

Parish Council compared to Village Hall

A Village Hall charity is not usually incorporated (unless it is a CIO - see later). This means that it is not a statutory entity. Examples of things that are statutory entities would be a company, or a Parish Council, or a living breathing person. So, because a Village Hall is an unincorporated charity (and not an entity), it cannot own land in its own right. So usually a Parish Council holds the title on behalf of the charity. Charities report annually to the charities commission. When looking at differences between a Parish Council, and a Village Hall, we can see:

Parish Council

Local arm of Government
Feedback to central Gov
SALC
Corporate body
Councillors serving 4 yr term
Standing orders
Powers & duties
Does what it has powers to do
Laws, Rules, Guidance
Public meetings & minutes

Village Hall

Charity (usually un-incorporated but may become CIO).
Annual report to Charities Commission
Suffolk ACRE / Community Action Suffolk
usually un-incorporated
Managing Trustees serve usually 1yr term
Governing Documents
Constitution & conveyance
Does what it was set up to do in Governing Document.
Charities law and guidelines
Private meetings & minutes (AGM is usually public, where accounts are presented and questions may be asked).

One question raised about Charities was: does it mean that any legal activity by the charity is permissible so long as all the proceeds go in to the Charity's funds? The answer is no . The charity is only permitted to carry out activities that are laid out in the governing document. What usually happens is that a separate club/society/group is set up to raise funds, and then donates all the profits to the charity. The charity has to make sure they list it as a donation. Mr Horn continued quote: "*For many Village Halls, the profit for running a bar at events is a vital part of their income. But if it is coming to more than 25% of their income then it needs to be separated . Otherwise they are at risk of losing their Charity status*"

Charities can only make donations to worthy causes if it says so in the Governing Document. This would not prevent a village Hall from running a fundraising event for say disaster relief on the other side of the world so long as it is made very clear that the event is for another organisation. You cannot simply take money from your Village Hall funds and give it to something else.

Trustees

Trustees of Village Halls usually serve for 1 year and can never be paid to be a trustee on the committee. Their code of conduct is published by the Charities Commission (similar to Parish Council Nolan principles). Two types of Trustees are involved with Village Halls are:

1. Custodian (Holding) Trustees

These people are only the title holders
Because the charity cannot do so. They
are not responsible for the day to day
Running of a VH and *are not*
Responsible for the VH finances
(unless there are no Managing Trustees).

2. Managing Trustees

People who are concerned with the
day to day running of the community
building or village hall. All of the
Managing Trustees are responsible
for the finances (not just the
Treasurer).

Three main types of Custodian Trustee. Mr Horn said - quotes:

- 1. Individual (temporary) Custodian Trustee.** *"If the role of Custodian Trustee is held by one individual, then it means that every time that individual moves on, or doesn't want to carry on that role then you will need to get that legal document changed, which means involving solicitors. A better thing is to look for a permanent trustee. "*
- 2. Parish Council (permanent) Custodian .***"There are 2 options for permanent trustee. One is a Parish Council which being a statutory body, is a legal entity in its' own right.*
- 3. Official Custodian (permanent).** *"Alternatively, a Charity (eg Village Hall) could approach the Charities Commission and ask the Official Custodian to take on the role of Holding Trustee. A Village Hall can , if they are having problems and are at loggerheads with their local Council, can ask Charity Commission to step in and take on role of Custodian even though the Parish Council don't want it to go away from them.*

The problem is that lots of groups understand this when it is set up. But 10 or 15 years down the line somebody working through the Parish Council Information comes across deeds to the Village Hall written down in [the Parish Council's] name and thinks that [the Parish Council] owns it. They start trying to dictate to the charity how it should be run. That is not the role of Custodian."

Managing Trustees are fully liable

Village Hall get their Managing trustees from 3 main sources:

1. Elected at the AGM

2. Governing Document names
organisations entitled to appoint
trustees (eg Parish Council,
Mother's Union, Football Club)

3. Co-opted Trustee

After the AGM, Co-opt
person with skills you
need, or to fill a space.

Mr HORN commented about trustees' liabilities.

Quote: *"Because they are unincorporated, a lot of charities will find that people don't want to be a trustee - They will say - I am happy to be on the village hall committee , but I am not a trustee. Actually, if you are on the village hall committee, and you steer the way that charity is run, you vote in the committee, you help the way that charity is run, then the law will regard you as a trustee (ie one of the people who do the day to day business). People who say they want to be on the committee but don't want to be a trustee are scared of the responsibility, and the liability."*

Mr HORN emphasised the point about being an unincorporated charity .

Quote: *"If you are an unincorporated charity, then as a trustee you and your fellow trustees are completely liable. People are scared of the concept of if I am a trustee on the village hall and it goes wrong then the bailiffs will come and take my house. In theory that is true. However it has never happened to the best of my knowledge. Some charities take out Trustee liability insurance or indemnity and it makes people feel happier about being a trustee. For most Village Halls that have changed over to become a corporate body like a CIO, often the predominant reason for doing so is that if you become an incorporated organisation, then you have limited liability."*

Governing Documents

Mr Horn said - quote:

"Village Halls can't hold title to land or enter into any contract because they are not a corporate body such as a living person or an incorporated Company. As most Village Halls are not incorporated , they cannot hold title to land in their own right. So what they do is they have a group of Managing Trustees on a committee, and then you also have Custodian Trustees (sometimes called Holding Trustees) - very often this will be the Parish Council. The role of the Holding (Custodian) Trustee is simply to hold the title to land on behalf of the charity, and to do as instructed by the Managing Trustees. That's it for the role of the Holding Trustee. There is no other part to it.

Every Trustee should be familiar with the Governing Document. It is absolutely vital. The trustee of whatever it is , it is effectively like a contract, and so if you sign up as a trustee (and this can be whether you are the sole trustee, or you could be the Parish Council's appointed representative on a Village Hall Committee) then as a Trustee you need to be familiar with what the Governing Document says because that is your contract. That says what the Charity does and how it does it. It is surprising how many charities I deal with that when I ask them for the Governing Document they say they don't know where it is."

Mr HORN later said that if a Governing Document for a community building cannot be found, then Community Action Suffolk can provide advice. There is no national or central archive for Governing Documents. You cannot just phone someone up and ask for a copy.

Amending or altering the Governing Document

Mr Horn explained - quote:

"You cannot decide that your Governing document is too old fashioned and you want to rewrite it , or that you want to throw it away and start again. You have to use the wording by

which the Charity was recognised. Section 280 of the 2011 Charities Act allows you to make certain changes. You cannot change the aims & objectives, and you cannot change a disposal clause. What you can do is make administrative changes for example saying that you want 5 trustees instead of 3, or saying that you want the AGM in October rather than May. You would make these changes and then fill in a form so that the Charities Commission could understand the changes that you had made.”

Village Hall on the Asset Register & Land Registry.

Mr Horn explained - quote:

“A Parish Council acting as Custodian Trustee should list a Village Hall on its Asset List, but with a value of nil, because holding title to land doesn't mean you own it. If you own something you can dispose of it. If you are holding a title on behalf of somebody else like a charity, then it is not yours to do with as you freely wish. A Town or Parish Council may be the Custodian Trustee [of a Village Hall] but that does not mean it owns it.

“Also, when you come to register the land, it should not be registered as [eg. anyplace] Parish Council. It should be registered as - [eg Wrentham] Parish Council as Custodian Trustee for [eg Wrentham] Village Hall. That is quite an important thing if the land needs to be registered at some point because very often land for these buildings has not been registered yet.

Very often on the original Governing Document for Village Halls, it will say that the land was purchased by the Parish Council, but it will then say - to be held in trust for the purposes of a Village Hall. Then it will go on to explain how the committee is set up. Effectively that sets up a charity. The Parish Council may have purchased the land at that point in time, but effectively the land is now owned by the charity. The Council may have put the money forward for it but effectively it no longer owns it “.

Charitable Incorporated Organisations

There are diverse set ups for Community Buildings and this often depends on when and how they were set up. Some are owned outright and run by Council's, some are Charities, and some were set up before the CIO option was available and so they are Limited companies with charitable status who have to follow both charity law and Company law. The way forward, for the future, is for all of these community buildings to eventually turn over to be CIO's and have a standard structure.

If the circumstances are right, then it is better for Village Halls to become Charitable Incorporated Organisations (CIO's). This is because they then have limited liability. An example given was the case of a play area and sports field which were run by separate charities. The solution was to amalgamate both in to a single new entity under the CIO system.

Mr HORN commented that becoming a CIO is the way forward and *“The number of groups changing over to become CIO's is slowly growing. CIO is a new structure that has been around for about 5yrs”* He went on: *“In order to become a CIO, you first need to set up a new organisation which is a CIO, then transfer land assets and everything else across according to the disposal clause (or otherwise consult the residents in the area of benefit)”* Almost always there will be some legal costs. As at May 2018, Groundworks Suffolk is seeking Lottery funding for organisations wanting to convert to being a CIO.

Miscellaneous points

If a Village Hall is considering a complete re-build. It is worth remembering that there is no VAT on a complete rebuild for community buildings.

Charities cannot make donations to worthy causes (unless it says so in the Governing Document). They can sell services such as renting out rooms.

Village Halls employing people: If a charity gives money to a “volunteer” for eg sweeping the floors then the charity is an employer with all the associated responsibilities that entails. Also payments known as “honorarium” payments . These are ex gratia payments (i.e., a payment made without the giver recognizing themselves as having any liability or legal obligation to someone volunteering to do an activity or provide a service). If a charity makes a regular “honorarium” payment to eg a cleaner , then they are in fact an employer. Honorarium payments are really only for unusual / rare one off type payments.

A chairman of a village hall cannot usually make decisions on his/her own. Exceptions might include things like a special delegated power for a specific reason, or a dire emergency.

The public are not entitled to come along to meetings of the Village Hall Committee. They are private meetings with private minutes. The public meeting is the AGM. Mr HORN also commented *“I know some Village Halls that have been told by their Parish Council that they must publish their meetings on the Parish Council website. That is not true. As a charity you do not have to publish your meetings or minutes. Minutes are an aide memoir as to what has been done and what you need to do before the next meeting.”*

Village Hall accounts must be separate from those of a Parish Council. Village Hall management meetings must be separate from Parish Council meetings.

Parish Councils helping Village Halls & playing fields

Councils can help by:

- -Appointing trustees, and acting as Custodian trustee.

Charity must have minimum 3 unconnected people as managing trustees. If the trustees want to stand down, and the VH due to close then the sole Custodian trustee (often this is the Parish Council) is not obliged to step in (but in practice most do to save the community asset). As a sole trustee you need to make an annual return about who the trustees are etc, as can be seen on the Charities website.

- -Funding (powers under Loc Gov Act 1972, Sec 19, 133, and 137)

- -Using the Hall for meetings and paying for it
- -Submitting planning applications on behalf of the Village Hall (because councils get a discount)
- -Community engagement
- -Rate relief
- -Assistance with any legal costs

Other types of setups for community buildings

Community Interest Company

A Community Interest Company can be registered in England and Wales, Scotland or Northern Ireland. It is a hybrid between a charity and a profit making company. A Community Interest Company must be set up and run for the benefit of the community. A CIC can only be registered with the consent of the Community Interest Companies Regulator. The application must comply with CIC legislation as well as the usual rules for registration of a company. The CIC Regulator has to be satisfied that the proposed company is being set up to benefit the community and that its articles include all the provisions required of a community interest company. Each year, the CIC must submit a return stating what its activities have been and that these have been of community benefit. A CIC is an “entity” in the same way as a living breathing person is, and so a CIC could take out loans etc.

Further sources of Information

- Charities Commission.
- Action with Communities in Rural England (ACRE) - lots of information sheets.
- Community Action Suffolk (CAS)
- Communities for Rural England.
- Charities Act 2006 and 2011.