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| Corporate Trustees |
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| OG38 |
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WARNING

References to amending governing documents, mergers, land disposals, permanent endowment and special trusts in this OG have not been updated to reflect Charities Act 2022 changes.

From 7 March 2024, the Charities Act 2022 made changes to the legal requirements relating to amending governing documents, charity mergers and disposals of charity land.

From 14 June 2023, the Charities Act 2022 made changes to charity land, permanent endowment (both expenditure of and borrowing from) and charity names.

**OG 38 Corporate trustees**

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**Summary of the guidance**

This guidance details what a corporation is, how one is created, the forms it can take and our policy on appointing one.

**Casework Guidance**

**A1 What is a corporation? 1 February 2013**

**1.  The need for this guidance**

Caseworkers need to be aware of a number of issues when considering cases involving corporate trustees.  For example:

* What is a corporation?
* What restrictions are there on their activities?
* What factors affect their appointment or removal?
* When do we need to use our powers to appoint or remove them?

This guidance sets out to address these issues and other aspects we need to consider in relation to the role of corporations as trustees.

**2.  What is a corporate trustee?**

For the purposes of this guidance, a corporate trustee is a corporation which has been appointed to act as a trustee of a charity.

The corporation may be:

* a "trustee for all purposes" acting on its own (a sole trustee);
* one of a number on a body of charity trustees;
* a holding trustee (or "nominee" or "custodian" under the Trustee Act 2000 - see OG 86 B4
* a custodian trustee.

A corporation does not itself need to be charitable to be a trustee of a charity.  For example, local authorities are not exclusively charitable and yet are trustees of many local charities.  Further examples of corporations which act as trustees and the roles which a corporate trustee can take on are given in OG 38 B1

**3.  What is a corporation?**

A corporation has a legal existence (and rights and duties) separate from those of the individual persons who form it from time to time.  So, for example, third parties enter into contracts with the corporation and not with the individual directors or members.  The corporation also has its own liabilities and assets which are distinct from those of the directors or members (see also OG 38 B4)

A corporation has perpetual existence and a name or title of its own; it may also have a common seal for use on official documents.  Another name for a corporation which staff will come across, particularly in legal volumes or documents is a body corporate.

**4.  How is a corporation created?**

There are a number of ways of creating ("incorporating") a corporation, including:

* under the Companies Acts (limited companies);
* under Part 12 of the Charities Act 2011 (incorporation of an existing trustee body);
* by an Act of Parliament (which can be either a public general Act or a specific private Act); or
* by Royal Charter.

These are some ways of creating a corporation.  Examples of corporate trusteeship are given in OG 38 B1.

**5.  Types of corporation**

Corporations are of two main kinds, both of which are likely to be encountered by caseworkers. The most common corporations are those where collections of persons are incorporated - corporations aggregate.  However, a corporation can be constituted in a single person - a corporation sole.

Companies incorporated under the Companies Acts are usually corporations aggregate but may now also be corporations sole.

* Corporations aggregate consist of several members at the same time.  Examples include municipal corporations (such as local authorities where, under the Local Government Act 1972, a council is created and then incorporated).
* Corporations sole consist of only one member at a time, with the corporate character being kept up by a succession of solitary members over time.  Corporations sole are always holders of a particular office; one example is the Official Custodian for Charities.  The holders of certain offices in the Church of England (e.g. vicars) are also corporations sole (though their equivalents in the Church in Wales and the Roman Catholic and non-conformist churches are not). The Public Trustee is another example of a corporation sole.  Further information on the role of the Public Trustee may be found in OG 38 C3.  Property (which includes not only land and buildings, but also cash and investments) which the member holds by virtue of his or her office passes on retirement, resignation or death to his or her successor.

When dealing with the latter it is important to be clear if we are dealing with the individual as a person or the office that they hold.

**6.  Our policy on the appointment of corporations as trustees**

**6.1 General policy**

Where a corporation is to be appointed as trustee, those who are responsible for the appointment must be satisfied that its duties as trustee will be compatible with the objects for which the body corporate is set up to achieve.  They must also ensure that the corporation has the necessary authority to act as trustee.

This being the case, in principle there is no objection to appointing a corporation as trustee. There are some cases, however, which may need careful consideration and these are discussed in OG 38 B1.

**6.2 When we need to use our powers to appoint a body corporate**

In many cases the trustees or those responsible for appointing new trustees will have the power to do so through the provisions of the governing document.  If this is not the case there may be powers of amendment available to the trustees to change the governing document to allow them to appoint.

Where neither of these powers is available, however, then we may need to become involved in the process of appointment and make an Order or a Scheme.

**6.3 Factors to take into account**

Whether the appointment is made by the trustees or the Commission, there are several factors which need to be taken into account when considering appointment of a corporation as trustee. These include such questions as:

* Does the governing document allow the appointment of a corporation as trustee?
* Does the proposed corporation have the authority to act as a trustee of a charity?
* If the corporation is to be appointed, does it need to be a trust corporation in order to fulfil the role it will be required to take on?
* Is the corporation going to be appointed as a sole trustee (a "trustee for all purposes") or one of a number of trustees?
* If it is to be sole trustee, does the governing document contain trustee provisions that are not compatible with having a sole trustee, for example, quorum requirements?

Full guidance on these points is in OG 38 B2.  Where the Commission is making the appointment, caseworkers may find the flowchart in OG 38 F1 helpful.

**7.  Powers available to a corporation acting as a charity trustee**

When a corporation is appointed as a trustee, the powers available to it for the purposes of administering the charity will be those set out in the governing document of the charity. The powers in the corporation's own governing document will not be available. Where we receive a request to change the powers of a charity, we will need to consider these in line with our usual policy - see, for example, OG 500 Schemes, OG 501 Orders  and CC22 and the guidance on specific powers such as remuneration, trustee indemnity insurance, disposal, income reserves and borrowing. (See also OG 38 B3.)

However, the constitution of the body corporate is relevant to the question of how the body corporate signifies its corporate will as trustee of the charitable trust.  For example, if the constitution of a body corporate enables the directors to delegate functions to a committee of two or more of their number, the corporate trustee can signify its corporate will as trustee via a decision of such a committee. It does not matter that the governing document of the charitable trust contains no power of delegation, and that the delegation is outside the scope of section 11 of the Trustee Act 2000.

**8.  Accounting requirements**

Where a charity is administered by a corporate trustee, solely or jointly with others, we must make clear to the officers of the corporate body that it is a separate legal entity from the charity. The charity’s books and accounts and those of the corporation should normally be kept and prepared separately. This applies equally whether the corporation is itself charitable or not. (The exception to this may be where we have made a "linking direction" for accounting purposes - see OG 555.

This is a very brief statement on the accounting requirements for charities with corporate trustees. Full details of the accounting requirements under [Part 8 of the 2011 Act](http://www.legislation.gov.uk/ukpga/2011/25/part/8) are given in OG 15 series.

**B1 Examples of corporations which commonly act as trustees and the roles which a corporate trustee can take on 6 September 2012**

**1. A corporation need not be charitable to be a trustee for a charity**

A corporation does not itself need to be charitable to be a trustee of a charitable institution. Municipal corporations such as local authorities are not exclusively charitable and yet are trustees of many local charities, either as sole trustee or jointly with others.

A corporation may be appointed as a charity trustee (see s.2), a nominee or holding trustee (see s.3), or a custodian trustee (see s.3.3).

**2.  Examples of different corporations which commonly act as a sole trustee**

**2.1 Trustees incorporated under Part 12 of the 2011 Act**

Under Part 12 (ss.251 - 266) of the 2011 Act, we have the power to confer the status of a body corporate on a body of trustees of a charity.  That body corporate can then act as sole trustee of the charity concerned.  Details of both legislation and procedures are given in full in section 4.

**2.2 Local authorities as charity trustees**

Local authorities are municipal corporations which can be appointed as charity trustees, and many local charities do in fact have their local authority as their sole managing trustee.

While we would not refuse registration to a charity with a local authority as trustee, there are a number of reasons why we would prefer that local authorities are not trustees of charities.  The same reasons should be taken into account when considering whether or not to offer to make a Scheme appointing the local authority as trustee of an existing charity.  Existing guidance on this can be found in OG 56

Local authorities cannot, by statute, be trustees of ecclesiastical charities or local charities for the relief of poverty (s.139(3) of the Local Government Act 1972).

**2.3 Banks or insurance companies**

In the early part of last century, it was quite commonplace for banks or insurance companies to be appointed as corporate trustees of charities otherwise unconnected with them.

However, for various reasons we do not now generally consider commercial banks or insurance companies to be appropriate trustees.

Charity trustees need to be exclusively focused on the best interests of the charity. The skills needed at trustee level might include the administrative, financial and investment skills traditionally offered by commercial banks and insurance companies, but to function effectively other skills are likely to be required as well.

Because banks and insurance companies involved in the trustee business earn part of their living from remuneration for acting as trustee there is an immediate conflict with the voluntary principle of charitable trusteeship (see [CC 11 Payment of charity trustees](http://www.charitycommission.gov.uk/publications/cc11.aspx)).  It is common for banks and insurance companies to require a power which entitles them to remuneration in line with their published remuneration scales from time to time in force.  These scales are not linked directly to the value provided by such trustees to any particular charity of which they are trustees.

As a result, in relation to an application for registration, the question may arise as to whether the institution with a governing document which includes a "bank trustee remuneration clause" is being established for exclusively charitable purposes.

Where a bank or insurance company is considering becoming a trustee of a charity which does not have a remuneration clause in its governing document we may receive a request to agree a constitutional change which would enable payment to be made.  Such requests should be considered in the light of [CC 11](http://www.charitycommission.gov.uk/publications/cc11.aspx) but it is unlikely, other than in exceptional circumstances, that a sufficient case justifying payment could be made out.  In practice in most cases it is likely persons can be identified who will act as trustees in an unpaid capacity.  It will be open to them to acquire such administrative, financial and investment advice and services they may choose and feel they may require.

(See also OG 38 B2 section 3.4)

The fact that a bank is a trustee does not place the charity in an advantageous position if its funds are deposited with that bank.  The position would be just the same as that of an individual who deposits money - they would simply have the rights of an unsecured creditor (should the bank become insolvent). The charity would have to stand in line with all the other unsecured creditors, and may only get a small proportion of the deposited funds returned to it.

There is a statutory fund which may indemnify depositors against a substantial proportion of their loss.

**2.4 City livery companies**

City livery companies are long established, usually wealthy bodies associated with a particular trade or craft and based in London, for example the Worshipful Company of Goldsmiths or the Drapers' Company; a number of them have associated charitable trusts, often many of them.  These may be each registered separately or may be registered together under section 12(2) of the 2011 Act.

In most cases the company is appointed as trustee to the charities. This is not always obvious, however, as the trust deed or Scheme sometimes refers to the “Master, Wardens and Commonalty of the Company” - this is just another, more formal way of referring to the company itself.

In some cases the company has an associated foundation, which is also a body corporate and acts as trustee to the charities associated with the company.

**2.5 NHS Charities**

The definition of 'NHS' charity is set out in s149 (English NHS Charities) and s150 (Welsh NHS charities) of the Charities Act 2011.  Most NHS charities are administered by NHS Trusts of various types (corporate bodies) acting as sole corporate trustee.  Some 20 NHS charities in England are administered by three categories of trustee bodies (with individual trustees) established under NHS legislation:

* special trustees (s212 NHS Act 2006)
* trustees appointed under para 10 of Sched 4 to the NHS Act 2006
* trustees appointed under s51 NHS Act 2006

All NHS charities' trustees (corporate and individuals) are appointed by, or under delegated authority from the Secretary of State for Health (in Wales, Welsh Ministers), who also decide which type of trustee is linked to which NHS charitable funds. Those charities are subject to a specific accounting regime (set out in ss149-150 Charities Act 2011).

Casework for NHS charities (other than s46 Inquiry work) is contained in First Contact. If the Secretary of State (or Welsh ministers) change the trusteeship of an NHS charity, the new trustee(s) should consider E2.4 - E2.7 of [NHS Charities guidance](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360670/NHS_charities_guidance.pdf) and notify us through 'Contact us'.

From autumn 2014, the Secretary of State for Health has agreed that trustees of English NHS charities can seek to convert those charities to 'mainstream' charities that are independent from the Secretary of State's jurisdiction to appoint their trustees.  Once the conversion process has taken place the new charity will **not** be an NHS charity for the purposes of NHS or charity legislation, although it will have objects very similar to the charity it replaced.

Those new charities may update their trustee details via the Commission's online service and do not require our prior consent.

**3. Corporations which primarily hold title to property**

**3.1 General information on types of trustees who hold property and who may have other duties**

A corporation may hold property or title to property on behalf of the charity trustees.  It will not own such property as part of its corporate property but rather "on trust" for the charity.  Additionally (unlike individuals) a corporation may be able to act as a custodian trustee (see OG 39).  A corporation must have its own constitutional authority to undertake these functions.

Under the Trustee Act 2000 a "nominee" is a person appointed by the trustees to hold charity property in his or her own name.  So a corporation may be the registered owner of certain shares in a company but may in fact hold them as the nominee for a trust.

A "custodian" is defined under the Trustee Act 2000 as a person who undertakes the safe custody of some or all of the assets of the trust or of any documents or records concerning the assets.  This is not the same as a custodian trustee.

A "holding trustee" could be either, both or neither of the above but in any case will have his or her duties set out in the governing document.

However, these different types of trustee will always be subject to a general legal duty not knowingly to act in such a way as to assist the charity trustees to commit a breach of trust.

A trustee such as this may, however, have protective or supervisory duties as well. A custodian trustee is an example – this is not to be confused with a custodian appointed under the Trustee Act 2000. The protective duties of a custodian trustee are defined by section 4 of the Public Trustee Act 1906 - these are described in OG 39 A1.

There are other types of protective/supervisory trustees whose duties are defined in a different way by statute e.g. a diocesan authority acting under the Incumbents and Churchwardens (Trusts) Measure 1964 or the Parochial Church Councils (Powers) Measure 1956.

In some cases, the protective/supervisory role of the separate trustee is defined in the charity's governing document, but considerable care needs to be taken to ensure that the respective responsibilities of the charity trustees and of the protective/supervisory trustee are very clearly defined.  Failure to do this can easily result in internal disputes between the charity trustees and the protective/supervisory trustee.  For an extract from the drafting manual regarding the making of an order to deal with this see OG 38 C2.

**3.2 Why have a trustee to hold the title to trust property?**

The general rule in the past was that the title to property needed to be held in the name of the charity trustee or trustees. This was designed to minimise the risk of loss to trust property by the fraud or negligence of third parties who may have been able to gain control of trust property.  But this general rule was often difficult to maintain, particularly when there were frequent changes of trustees.  Unless proper deeds of appointment or transfer were made on the occasion of every resignation or appointment, the title to the charity property would remain with those in whose names the title was last vested, even if they had long ceased to be trustees. The appointment of a nominee can also lead to day to day convenience and efficiency whenever an asset is bought or sold.

The Trustee Act 2000 allows the trustees, subject to certain qualifications, to appoint a person to act as their nominee.

More detail as to who may act as nominee or as custodian as defined in that Act can be found in OG 86, Trustee Act 2000.

**3.3 Custodian trustees**

A custodian trustee, as defined in the Public Trustee Act 1906, is a corporate body that is often appointed to hold property on behalf of the trustees of a charity.  This is discussed more fully in OG 39.

* for their nature, powers and duties see OG 39 A1; or
* for their appointment and removal, and when it is not appropriate to appoint one, see OG 39 A2.

Only corporations can be custodian trustees; individuals cannot.

Rule 30 of the Public Trustee Rules 1912 (as amended) lists which corporations may act as custodian trustees.

"Custodian trustees", however, are not to be confused with "custodians" who may be appointed under the provisions of the Trustee Act 2000 where individuals can be appointed as custodian. (This is explained in more detail in OG 86 B4, Trustee Act 2000: power to employ nominees and custodians.)

**3.4 What if the charity already has a custodian trustee or has property vested in the Official Custodian?**

If a charitable trust or charitable association has a custodian trustee or has their property vested in the Official Custodian then the appointment of a nominee would not be appropriate as all the title to land and property and the documents associated with it would be vested in the custodian trustee or Official Custodian for charities.

**3.5 What powers to appoint a nominee or custodian do the trustees have?**

The trustees may already have, in the governing document, power to appoint a nominee or custodian. The new statutory power in the Trustee Act 2000 is in addition to this power. For more detail on this aspect see operational guidance OG 86.

**3.6 Appointment by the Court, by the Commission or by statute**

The power or duty to appoint can also be granted by the Court or the Commission (see the flowchart in OG 38 F1).

An example of this is the provision for the appointment of custodian trustees in the Public Trustee Act 1906, or the provision relating to the appointment of the Official Custodian in the 2011 Act.

**4. Trust corporations**

**4.1 What is a trust corporation?**

A trust corporation is a particular type of corporate trustee.

Although this term is sometimes loosely used to refer to companies which undertake for profit the administration of private and other trusts, its use should be confined to its strict meaning as defined in the 1925 property legislation. This is given at section 68(18) of the Trustee Act 1925 as:

  “a corporation either appointed by the Court in any particular case to be a trustee, or entitled by rules made under subsection (3) of section four of the Public Trustee Act 1906 to act as custodian trustee.”

 These rules are to be found in the Public Trustee Rules 1912 (as amended).

It is similarly defined in Section 117(xxx) of the Settled Land Act 1925, section 205 (xxviii) of the Law of Property Act 1925 and section 55 (xxvi) of the Administration of Estates Act 1925.

Section 334A of the Charities Act 2011 (as amended) provides (for the purposes of the five Acts above) that a trust corporation includes a body corporate which is itself a charity. It means that a body corporate which is itself a charity will automatically be a trust corporation for any charitable trust of which it is a trustee. ‘Body corporate’ includes companies, CIOs, corporate charities established by statute or Royal Charter, and community benefit societies. (The trustee is not, however, treated as having had trust corporation status under section 334A *before* that provision came into force on [31 October 2022]).

It is also possible for bodies to be appointed as trust corporations (for example, a corporation appointed by the Commission or by the court to be a trustee).

**4.2 When is trust corporation status necessary?**

The need for a body corporate to have the status of a trust corporation arises only when:

* it is proposed to appoint it as a sole trustee of a charity which owns land.  (This is the cautious view, though it is arguable that if the charity's governing document contains its own framework of land management powers - so that the statutory powers do not have to be used - and contemplates that they may be exercised by a sole trustee which is not a trust corporation, a sole trustee which is not a trust corporation may act.);
* one of the charity's trustee body is to be appointed as the nominee or custodian for the charity (see OG 86 B4 section 4.3); or
* (in some cases) a trustee wishes to be discharged under the powers of the Trustee Act 1925.  If that leaves a sole trustee acting, it must be a trust corporation, unless the trust originally had a sole trustee, and a sole trustee which is not a trust corporation can give a valid receipt for capital money.

A charity which owns land will need trustees who are able to exercise all the necessary powers in relation to the land.  In particular the trustees must be in a position to give a valid receipt for capital money. This includes proceeds of sale and any other capital funds arising as the result of the exercise by the trustee of land management powers under the Trusts of Land and Appointment of Trustees Act 1996.  If the trustee cannot give a valid receipt this will severely limit the extent to which it can manage the property in the charity’s best interests.

**4.3 How is trust corporation status acquired?**

There are four possibilities:

* any trustee of a charitable trust that is a body corporate and itself a charity automatically hastrust corporation status over any charitable trust of which it is a trustee - section 334A of the Charities Act 2011 (as amended). This includes companies, CIOs, corporate charities established by statute or Royal Charter, and community benefit societies.
* anybody qualified as a custodian trustee is a trust corporation.  Such bodies are listed in Rule 30 of the Public Trustee Rules 1912.  This list includes the Treasury Solicitor, local authorities, any company in the UK or member state of the European Community which is empowered by its constitution to undertake trust business (which for the purpose of this rule means the business of acting as trustee under wills and settlements and as executor and administrator) in England and Wales (with some other provisions regarding minimum levels of capital - see OG 39 B1) including any corporation which has the Lord Chancellor's certificate.
* (In this last case, the body corporate should apply to the Trust Division of the public Trust Office, which is part of the Lord Chancellor’s Department.)
* certain corporations have trust corporation status conferred on them explicitly by statute, for example the Church of England Pensions Board, as set out in section 31 of the Clergy Pensions Measure 1961.
* in cases where we make the appointment, paragraph 3 of Schedule 7 of the Charities Act 2011 provides that any scheme or order which we make to appoint a body corporate as trustee will have the effect of conferring trust corporation status on that body, but only in relation to the charities to which we appoint it to act as trustee.  (But we cannot appoint a body to act as custodian trustee if it is not already entitled to act as such; the fact that the appointment is to be made by the Charity Commission would not confer that entitlement.)

Where we are asked to make an administrative Scheme to appoint a trustee, simply so that the trustee becomes a trust corporation, how we deal with this depends on whether or not the actual appointment has already taken place:

* occasionally, a corporate trustee might already be appointed as trustee without our involvement, for example, by Statutory Instrument. In this case we will not make a confirmatory Scheme, appointing the trustee, just so that the trustee becomes a trust corporation. We will, instead, refer the charity to the Lord Chancellor’s Department who can grant trust corporation status under rule 30(d)(ii) of the Public Trustee Rules 1912.
* if the appointment has not yet taken place, we will, in most cases, make a Scheme to appoint the trustee and, consequently, grant trust corporation status. However, this would only happen if the corporate trustee was not itself a charity. This is because if the corporate trustee is itself a charity it automatically acquires trust corporation over any charitable trust it is a trustee of by virtue of s. 334A of the Charities Act 2011 (as amended).

OG 39 deals more fully with the appointment of custodian trustees.

**B2 Appointment and removal 26 July 2013**

**1. Who appoints corporate trustees?**

The governing document may allow the appointment of a corporation as trustee, either jointly with others or as a sole trustee. When a charity comes to us for advice it is important to ensure the trustees have explored this possibility first before we consider becoming involved in the process of appointment. The guidance below should be followed when assessing who may make the appointment and whether or not a particular body corporate may be appointed. (A flow chart to assist staff in making these assessments is available in OG 38 F1)

**1.1 Appointment by the trustees or those responsible for appointing trustees**

In some cases, the trustees will have the power to appoint a corporation as a trustee of their charity to act either as one of their number or as sole trustee. There may be:

* explicit powers set out in the governing document to allow them to do this; or
* there may be a power of amendment in the governing document which the trustees may use in order to give themselves the power to appoint.

If neither of these powers are present, the trustees may be able to rely on the statutory power of amendment given by s.280 of the Charities Act 2011 to give themselves a power to appoint a corporate trustee (see OG 519). Alternatively, depending on the changes required, we may need to become involved (see section 1.2).

When deciding to appoint a corporate trustee, and where there is a power to do so the trustees will need to amend any provisions within the governing document that relate to having a board of trustees rather than a corporate trustee, e.g., quorum provisions, and take into account the factors in section 2 below.

**1.2 When we need to be involved**

Where no suitable power exists in a charity’s governing document, trustees are able, in most circumstances, to rely on the statutory power of amendment to change a charity’s governing document to enable the appointment of a corporate trustee.

The Commission only needs to become involved in the appointment of a corporate trustee where:

* an ex-officio post must be removed; and
* the ex-officio office still exists; and
* the ex-officio post holder has not consented to the proposed removal.

Or:

* a third party has the power to appoint; and this third party:
* still exists; and has not consented to the removal; or
* cannot be traced.

Where this is the case, and where we are satisfied that to remove the trustee post is expedient in the interests of the charity, we can give our written consent to the amendment. See OG518-06 Amendments to Governing Documents: Unincorporated charities – additional requirements.

Whoever is making the appointment needs to be aware of the issues to be taken into account when considering appointing a corporation as a trustee of a charity, either as sole trustee or jointly with others. These are:

* whether or not the corporation has the power to act as trustee;
* whether the charity's interests will be best served by the appointment;
* whether the governing document of the charity permits the appointment.

**2. Does the corporation have the power to act as trustee?**

A body corporate can only be appointed to act as a charity trustee if it has the power to do so. The authority can arise in either of the following ways.

* The governing document of the body corporate may give it an explicit power to act as a trustee of the charity in question.
* If not, a power to act as trustee will be implied, if that is reasonably incidental to the furtherance of the corporation's objects.

If the body corporate is not itself a charity, it will also be necessary to consider if the body corporate needs to be a trust corporation. This will be necessary if it is to be a sole trustee and will need to be able to give a valid receipt for proceeds of sale or other capital money. For further information on this see OG 38 B1 section 4.

**IMPORTANT NOTE: ANY CASE OF DOUBT SHOULD BE REFFERED FOR LEGAL ADVICE.**

**3. General suitability of corporations as trustees**

**3.1 Compatibility of objects**

Where a corporation is to be appointed as trustee, those responsible for making the appointment must be satisfied that its duties as trustee will be compatible with the objects for which the body corporate is set up to achieve.  In some circumstances local authorities are examples of corporations whose charity trusteeship may be incompatible with their ordinary statutory functions (see OG 38 B1 and also OG 56).

**3.2 Charities with permanent endowment**

Although a company incorporated under the Companies Acts cannot hold permanent endowment as part of its own property, there is no objection in principle to the appointment of such a company to be the trustee of a permanently endowed charity.

There may be a concern that, in the event that the company is wound up, the charity will be left without a trustee. In practice, however, it should be possible to find a replacement before the company becomes incapable of acting (see s.6 below).

**3.3 Suitability of corporations to act jointly with others**

In principle there is no objection to appointing a corporation jointly with other trustees but each case must be considered carefully. It must be established whether the appointment of the corporation as trustee will be in the best interests of the charity. If we are making the appointment, we should be satisfied that the corporation will act in the charity's best interest along with the others.

It can be advantageous if:

* difficulties are expected in appointing trustees in future; and/or
* the trustees feel it would be helpful to have the benefit of the experience of an outside body which has been involved with similar charities.

But in such cases we should check that the existing trustees are satisfied that the body corporate will, in fact, serve the charity's best interests if appointed.

It may be that the organisation has two separate charities, one for the general running of the day to day activities and another for the premises. In this case allowing the corporation to be trustee of the premises charity would, subject to the appropriate checks, in most cases be acceptable.

There may be concerns if the corporation becomes a trustee of a charity which includes the funds for the day to day running of the organisation. For example:

* The corporation may wish only to be involved with the charity from a distance, offering what amounts to a property management service for which it may wish to charge fees or an annual fee, leaving the day to day trusteeship to the other trustees. This in itself may be incompatible with the trusts or provisions of the governing document. (See also OG 38 B1 section 2.3.)
* A further problem which may arise here is that the corporation may send a different representative to each trustee meeting. This makes it very difficult to establish any useful continuity in the dealings of the corporation in the charity's business.

These principles can be applied to charities where a corporation is to be appointed as one of the trustee body. A common occurrence of this type of appointment is in the case of chapel charities.

In some of these cases it may only be expedient to appoint such corporations as custodian or holding trustees where their responsibilities are limited to the holding of title to property on behalf of the charity trustees. (For more information on custodian trustees see OG 39.)

**3.4 Appointment of fee charging corporations as trustees**

Where an application is received from a charity under the trusteeship of a fee charging corporation, we take the same view as that where an individual is to be remunerated. Our policy is set out in current guidance to be found in [CC11 Trustee Expenses and Payments](https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11).

In line with that policy, it is only in very exceptional circumstances that we would authorise the appointment of a corporate trustee which would draw remuneration from the charity where there is no existing power of trustee remuneration in the document. (See also OG 38 B1 section 2.3.)

**3.5 Transfer of property to a parish council as trustee**

Under s.298 of the 2011 Act, charitable property can be transferred, under certain circumstances, to the trusteeship of the parish council, with our approval. Similarly with land being transferred to a local authority under the Open Spaces Act 1906.

To assess an application in this respect further guidance can be found in OG 56.

**4. Can the trustees themselves appoint a corporation as trustee?**

**4.1 When can and can't the trustees appoint a corporation as trustee?**

Subject to the points at 3.1 - 3.3 above, trustees may use their constitutional powers to appoint a corporate trustee if the trusts of the charity read as a whole permit this. Even if a power of amendment within the trusts of the charity is not broad enough to make the necessary changes, the trustee may be able to rely on the statutory power of amendment to make the changes (OG 519). As well as adopting a power to have a corporate trustee, the trustees must also amend any provisions in the governing document that relate to having a board of trustees, for example any quorum provisions. It may not, however, be advisable to appoint a corporation in the following circumstances:

* where the charity owns land and the trustees wish to resign in favour of a corporation acting on its own and that corporation is not a trust corporation;
* where the trustees wish to resign in favour of a corporation acting on its own (if it is not a trust corporation) and they will not obtain a discharge from the trusts under the Trustee Act 1925 or otherwise.

In these cases, a Scheme may be needed to permit the appointment of a corporation as trustee. We can offer to make such a Scheme where we are satisfied that the appointment will be in the best interests of the charity. (See OG 38 B1 for some examples of corporations which we would not readily appoint and section 3 above.)

If by Scheme we reconstitute a trustee body so that there is a sole corporate trustee it will usually be right for the Scheme to vest any land belonging to the charity in the sole trustee. Before we make a Scheme we expect the trustees to amend any provisions in the governing document which would be incompatible with the appointment of a corporate trustee, e.g. any clause setting out the requirement for a minimum number of trustees or quorum provisions, etc. The trustees can make these changes using a power of amendment set out in the GD or by using the s280 statutory power of amendment. The trustees’ resolution could state that the changes take effect at the time that the Commission appoints the corporate trustee.

**4.2 Are there any exceptions to these provisions?**

Sometimes trust deeds state that there is to be a minimum or maximum number of trustees but in at least one case these provisions are overridden by statute.

Under section 3 of the Baptist and Congregational Trusts Act 1951, provisions relating to the number of trustees to be appointed shall have no application when an ‘appropriate trust corporation’ is appointed as trustee whether to act alone or jointly with others.

An ‘appropriate trust corporation’ is, in the case of property held on trusts relating to the Baptist denomination, a Baptist trust corporation and in the case of property held on trusts relating to the Congregational denomination, a Congregational trust corporation.

This is the case for as long as the trust corporation remains a trustee of that organisation.

**5. Issues at registration**

The fact that an organisation has a body corporate as trustee (either on its own or jointly with others) will only rarely be a factor in determining charitable status. Caseworkers will need to be alert to the possibility of the charity being a ‘sham’ (see OG 21 - Charitable Status: Activities) and that the presence of a body corporate may be a factor in this. However, we must satisfy ourselves that the appointment of the corporation as sole trustee is in the best interests of the charity. To this end we must be satisfied that the objects of the corporation are compatible with the objects of the proposed charity.

The points at OG 38 B1 s.2.2 and OG 38 B2 s.3 need to be considered and, if the corporation is a local authority, reference should be made to OG 56.

We should also look at the issue of corporate trustees requiring remuneration and the impact this might have on the charitable status of the organisation - see also OG 38 B2 section 3.4 and OG 38 B1 section 2.3.

**6. Removal of a corporate trustee**

**6.1 Circumstances of removal**

There are a number of reasons why a corporate trustee may be removed. These are similar to those for any individual trustee. It may, for example:

* desire to be discharged from its duties;
* refuse to act as a trustee;
* be incapable of acting as a trustee - for example, because of its dissolution (see s.6.2 below);
* agree with us to be replaced by another corporate body or by a body of individual trustees; or
* have to be removed under s.76 of the 2011 Act as the result of a statutory inquiry under s.46.

**6.2 Dissolution**

If a corporation which is a trustee is dissolved, it is deemed from the date of dissolution to be incapable of acting as a trustee. It is then therefore liable, under s.36 of the Trustee Act 1925, to be replaced as a trustee. We have the power to remove a corporate trustee which has gone into liquidation, but which has not yet been dissolved.

**6.3 Replacement**

If it is proposed to replace an incorporated trustee, for whatever reason, and appoint individual trustees in its place, the removal and appointment can usually be effected by using the powers available in the governing document. If this is not possible, for example if there are no other existing trustees or no other person(s) responsible for appointing, then it may be necessary for us to make an Order.

A Scheme will only be necessary if the trusts of the charity require to be altered as a consequence of the removal. For example, if the governing document expressly requires that there is only to be a corporate body as trustee and we are replacing it with an individual or individuals then a Scheme is the only way this can be achieved.

**6.4 Procedure when a corporate body appointed under statute stands down**

If the corporate trusteeship was brought about by a statutory provision suspending previous trusteeship arrangements in a charity’s governing document (e.g. section 3 of the Baptist and Congregational Trusts Act 1951), then if and when the corporate trusteeship is terminated, the provisions in the governing document are revived.

We may remove a corporate trustee from office using our powers under s.76 of the 2011 Act in the same way and under the same circumstances as for an individual trustee.

**B3 Delegation of powers by corporate trustees 26 June 2006**

**1.  Delegation of duties and powers by corporate trustees**

In general, the same rules and restrictions on delegation of duties by trustees apply to corporate trustees as they do to individuals.  For the trustees to authorise a person to exercise any of their delegable functions they must either have the power to do so in the governing document or rely on the default power in the Trustee Act 2000, or other legislation relevant to the organisation in question. Examples of the last of these options include local authorities which can rely on local government legislation for powers of delegation, and health authorities which can similarly rely on legislation relating to the National Health Service.

In the case of a charitable trust the trustees' delegable functions are:

* any function carrying out a decision of the trustees;
* any function relating to the investment of assets subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land);
* any function in relation to raising funds for the trust other than where this is by primary purpose trading;
* any other function prescribed by an order of the Secretary of State.

The trustees may delegate these powers to the person who is also their nominee or custodian if they wish. The trustees must exercise their duty of care in delegating their delegable functions and, unless inconsistent with the terms of the governing document, are required to exercise their powers of review, intervention or revision of policy statement if necessary according to section 22 of the Trustee Act 2000.

A trustee is not liable for any act or default of the agent to whom he or she has delegated unless the trustee has failed to comply with the duty of care applicable under paragraph 3 of schedule 1 of the Trustee Act.

For more detail on this see OG 86 B5 section 4.

**2.  Delegation by trustees of health service charities**

In the case of NHS Charities, wide powers are given to Health Authorities and NHS Trusts as regards the way in which they signify their corporate will in relation to the administration of charities. They can act through committees, sub-committees and officers, both internal and external, as well as through their boards of directors. This may include discretionary investment managers.  However the corporate body is the sole trustee and will be responsible for the acts taken by its agents on its behalf.

**3.  Delegation by local authorities**

For information on the delegation of duties and powers by local authorities see OG 56 B1 section 4

**4.  Internal mechanisms by which corporate trustees make decisions**

Corporate trustees may delegate some of their decision making provided they have a power to do so in their governing document, or by statute (see section 1 above).

A local authority may delegate some of its functions to committees, sub-committees or even individuals.  In these cases decisions taken by those so authorised will be as much a decision of the local authority as a decision taken by the full council (see OG 56 B1 section 4).

Similarly, a decision taken by the committees or employees of a corporation who are authorised to make such decisions under the governing document of the corporate trustee will be as much a decision of the company as a decision made by the directors.  (See also OG 38 B4 for liability of corporate trustees.)

**B4 Liability of corporate trustees 14 March 2012**

**1.  Liability of corporate trustees**

**1.1 Breach of trust/duty**

Where a body corporate is the sole trustee of a charity, the individual persons who, from time to time, are responsible for the management of the corporate body are not themselves trustees of the charity. The duties, responsibilities and liabilities of trusteeship lie with the corporate body.  However, that body must act through individual persons in order to express its will.

If the body corporate commits a breach of its duty as a trustee, it will have done so only as a result of a breach by its directors or other individual officers of their duties towards the body corporate. While they, therefore, cannot be held liable directly by the charity, they may be held liable to the corporate body for any liability it has incurred in respect of the charity.  We should, therefore, stress to the officers of corporate trustees that they should familiarise themselves with:

* the terms of the charity’s governing document; and
* the procedures which have been prescribed in legislation (such as the Companies Acts and Regulations made under them).

**1.2 Bodies incorporated under Part 12 of the 2011 Act**

Notwithstanding the above, there are some qualifications to this. For example, the members of a corporation formed under Part 12 of the 2011 Act are liable directly as charity trustees.

**1.3 Liability of local authorities**

The position with regard to local authority liability needs to be considered and this is discussed in OG 56 B1 section 6.

**2.  Liability of health service charities**

Officers of a corporate trustee of an NHS charity should also study the standing orders and standing financial instructions for NHS charitable funds.

Where a health service body is acting as trustee, any liability for breach of trust will lie with that body. However, if the actions of individual officers of that body have led to the breach of trust, those officers may have a liability for breach of duty to the trustee.

Section 265 of the Public Health Act 1875 (as amended by the National Health Service Act 1977 and the National Health Service and Community Care Act 1990) provides some protection against personal liability for members and officers of health service bodies.

**3.  Indemnity insurance**

As any personal liability incurred by the officers of the body corporate will be to that body rather than directly to the charity, we do not consider the taking out of trustee indemnity insurance to be suitable in this case. We would be unlikely to make an Order authorising the purchase of indemnity insurance for the trustee, as it would be difficult to justify this as being expedient in the interests of the charity.  (See also OG 56 B1 section 6 for the position regarding local authorities.)

**C1 Execution of documents 26 January 2012**

**1.  Does a corporate body need a common seal?**

In many cases it is optional for a corporation to have a common seal, e.g. bodies registered under the Companies Act, and bodies of trustees incorporated under Part VII of the 1993 Act [Part 12 of the Charities Act 2011 with effect from 14 March 2012], or its statutory predecessor. We should take no view one way or the other if asked by officers of a corporate body whether or not they should have a common seal; that is a matter for them to decide.

If the members of the corporate body do wish to have a common seal, then they should ensure that:

* the design of the common seal includes the name of the corporate body;
* proper measures have been agreed by them for its safe custody; and
* regulations have been agreed by them for its use.

Where there is an option we should, however, point out that there are costs (in the order of a few hundred pounds) to be incurred by having a common seal, and there are alternative methods by which a document may be executed by an incorporated body of trustees, which may be more suitable for many charities.

**2.  Methods of executing documents**

If a corporate body has a common seal, a document may be executed by the body by affixing the common seal to the document.

**2.1 A body incorporated under Part VII of the 1993 Act [Part 12 of the Charities Act 2011]**

In the case of a body incorporated under Part VII of the 1993 Act [Part 12 of the Charities Act 2011 with effect from 14 March 2012], whether or not it has a common seal, documents may be executed either by:

* being signed by a majority of the individual members of the corporate body and expressed as being executed by the incorporated body; or
* being executed, that is the seal attached (if there is one) or signed on behalf of and under an authority granted by the trustee.

An authority may, unless the governing document of the charity disallows it, be granted by the trustee to two or more of the individual members of the corporate body to execute documents in the name of, and on behalf of, the corporate body. This must be either in writing or by resolution of the governing body of the corporate trustee. It may be a general authority or may be limited as the trustee sees fit.

**2.2 A company registered under the Companies Act**

Different provisions are made for companies: s.44 of the Companies Act 2006 allows their documents to be executed by:

* the affixing of the company seal; or
* being signed by two authorised signatories signing it on behalf of the company (i.e. any director, or the secretary or the joint signatory); or
* being signed by a director of the company in the presence of a witness who attests to their signature.

**C2 Delineation of trustees' roles - extract from drafting manual 12 June 2012**

**1.  Holding trustees**

If holding trustees are appointed, the persons administering the charity (the "charity trustees") are called administrative trustees.

The holding trustee(s) can be:

* some of the administrative trustees;
* other individuals connected to the charity;
* a corporate body (such as a trust corporation or company charity); or
* both individuals and a corporate body (as in the case of some free church property).

Usually the sole function of holding trustees is to hold the title to all or part of the property of a charity. **They can play no part in the management of the charity. They must act on the instructions of the administrative trustees, unless carrying out the instruction would be a breach of trust.**  Providing they act in this way they will not be liable for any of the actions of the administrative trustees.

Some governing documents may give the holding trustees some additional responsibilities. It is therefore important to check out their functions.

**2. Custodian trustees**

A custodian trustee is a corporate body which has been appointed to have the custody of the trust property of the charity. The term was first introduced by the Trustee Act 1906 and the powers and duties of a custodian trustee are set out in section 4 of that Act. Strictly speaking custodian trusteeship only arises when a trustee is appointed in accordance with section 4 of the 1906 Act (otherwise the trustee may be a holding trustee).

The custodian trustee will hold the documents (land title deeds, share certificates, etc), receive the income and remit it to the trustees. **The administration is left in the hands of the managing trustees and the custodian trustee can take no part in it.**  The custodian must act on the instructions of the managing trustees unless to do so would be a breach of trust.

Certain corporations are entitled to be custodian trustees under rule 30 of the Public Trustee Rules of 1912 (as amended). All local authorities are entitled to act as custodian trustees of non-ecclesiastical charitable trusts for the benefit of the inhabitants of the area of the local authority concerned and its neighbourhood (e.g. village halls and recreation grounds).

**C3 The role of the public trustee 13 August 2001**

**1.  Background**

The Public Trustee is an office created by the Public Trustee Act 1906. The Public Trustee is a corporation sole appointed to act in the administration of small estates, as a custodian or ordinary trustee, or a judicial trustee, as determined by the Act.

Whilst the Public Trustee cannot be appointed as a trustee (in any capacity) of a trust which is wholly charitable, he or she may be appointed to one which is a mixture of charitable and non-charitable trusts.

**2.  Must the Public Trustee retire from a trust should all the trusts except charitable trusts come to an end?**

Section 2(5) of the Public Trustee Act 1906 states that the Public Trustee must not "accept any trusts for charitable purposes". However, there is no prohibition on him or her accepting a trust which is partly charitable.

Over the course of time, all the trusts except religious or charitable trusts may come to an end.  Although the Public Trustee is prohibited from accepting an exclusively charitable trust, he or she is not legally precluded from acting in the charitable trusts which remain from the mixed trust which he or she properly accepted.

That said, if there appears to be a practicable alternative to the Public Trustee as trustee, we should normally go so far as to consider with the Public Trustee whether he or she should agree to stand down in favour of some alternative administrative arrangement.

In practice, whatever the drawbacks in policy terms of the Public Trustee exercising his or her role as a charity trustee, he or she is unlikely ever to be in a position where he or she could be removed against their will by the use of our statutory powers.

More information on the role of the Public Trustee may be found on the website of the [Official Solicitor and Public Trustee](https://www.gov.uk/government/organisations/official-solicitor-and-public-trustee).

**F1 Flow chart: appointments 16 December 2010**

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