

LISS PARISH COUNCIL – CHARITIES WORKING GROUP TERMS OF REFERENCE

Following feedback received from NALC on our application for a Foundation Award through the Local Council Award Scheme it was noted that there needs to be more clarity regarding LPC's role as charity trustee. In particular NALC noted that it needs to be evidenced that LPC as trustee acts solely in the interest of the Charities when making decisions that relate to them.

Background

The three charities in question are:

Liss Village Hall (Charity reg no: 301872):

Parish Allotments (Charity reg no: 237190) and:

Liss Recreation Ground (Charity reg no: 301871)

The Charities were formed to protect the interests of the Village Hall, West Liss recreation ground and Pavilion and the allotment gardens. The sole trustee for all three Charities is Liss Parish Council.

Charity trustees have 6 main responsibilities:

1. Ensure the charity is carrying out its purposes for the public benefit

Trustees must make sure that the charity is carrying out the purposes for which it is set up, and no other purpose. This means they should:

- ensure they understand the charity's purposes as set out in its governing document
- plan what the charity will do, and what it wants it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes

Spending charity funds on the wrong purposes is a very serious matter; in some cases trustees may have to reimburse the charity personally.

2. Comply with the charity's governing document and the law

Trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to the charity

Trustees should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when they need to.

Registered charities must keep their details on the register up to date and ensure they send the right financial and other information to the commission in their annual return or annual update.

3. Act in the charity's best interests

Trustees must:

- do what trustees (and no one else) decide will best enable the charity to carry out its purposes
- make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting themselves in a position where their duty to the charity conflicts with their personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it's properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to a trustee, such as a partner, dependent child or business partner

4. Manage the charity's resources responsibly

Trustees must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. Trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- not take inappropriate risks with the charity's assets or reputation
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds

Trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise trustees risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of their duty.

5. Act with reasonable care and skill

As someone responsible for governing a charity, trustees:

- must use reasonable care and skill, making use of their skills and experience and taking appropriate advice when necessary
- should give enough time, thought and energy to their role, for example by preparing for, attending and actively participating in all trustees' meetings

6. Ensure the charity is accountable

Trustees must comply with statutory accounting and reporting requirements. They should also:

- be able to demonstrate that the charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if the charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where trustees delegate responsibility for particular tasks or decisions to staff or volunteers

Guidance from NALC on Local Councils as sole trustees states:

Pursuant to s.2 of the Charities Act 2011('the 2011 Act'), a charitable body must be established for a charitable purpose and for the public benefit. It cannot be established to further the purposes of some non-charitable body such as the council itself. Local councils and charities often have close interests in local matters. But the charity needs to be independent of the council. Decisions about the administration and operation of the charity must be taken solely with a view to furthering its charitable purposes and for no other purpose. In short, the council must realise it has a dual role, first, as a local authority and secondly as a charity trustee and the two roles must be kept entirely separate. All discussions and decisions relating to the charity should be taken at a meeting specifically called for that purpose, not at a council meeting.

If a council is the sole trustee, it should set up a committee. The individual committee members are not charity trustees. The committee will be governed in accordance with charity law and decisions made in the best interests of the charity, not the council. The charity's governing document will set out if non-councillors can be members of the committee. If not, all members of the committee must be councillors.

While LPC does act in the best interests of the Charities when making decisions regarding their activities, the recommendation is that we formalise the distinction between the Parish Council and the Charities.

Formation of a Charity Working Group

That LPC forms a Charity Working Group. The Charity Working Group will not be a formal Committee and will not ordinarily meet in public.

Terms of Reference for the Charity Working Group include:

Membership of the Charity Working Group will be restricted to:

- Chair of Liss Parish Council
- Vice-Chair of Liss Parish Council
- Chair of Facilities Committee
- Chair of Finance Committee

Meetings will be quorate with a minimum of 2 members present.

Members of the Charities Working Group may invite other LPC councillors or outside groups to present proposals or reports at meetings as necessary.

All decisions made by the Charity Working Group will be subject to a vote and each member will have a single vote. All decisions will be ratified by a simple majority. In the event of a tie,

the Chair of LPC will have a deciding vote. All decisions will be made solely to the benefit of the Charities.

The Charity Working Group will not consider any items other than those recommended by LPC or any of LPC's Committees without notifying Liss Parish Council (as Trustee) of their intention to. LPC will then have the option to discuss these at a public meeting or to delegate the discussion to one of LPC's Committees.

The Charity Working Group will delegate responsibility for the day to day management of the Village Hall, West Liss Recreation Ground and Pavillion and Parish Allotments to the Facilities Committee. The Facilities Committee will undertake to ensure that all decisions made regarding the operations of the Charities will be made in accordance with the Charities' governing documents and solely for the benefit of the Charities.

The Charity Working Group will delegate responsibility for the preparation of an annual budget for the Village Hall, West Liss Recreation Ground and Pavilion and Parish Allotments to the Finance Committee. The Finance Committee will undertake to ensure that all budgetary recommendations are made in accordance with the Charities' governing documents and solely for the benefit of the Charities.

The Charities will adopt all relevant policies approved by LPC and will consider any changes to these policies. These policies will include (but not be limited to):

- Financial Regulations
- Health & Safety
- Anti-fraud & Corruption
- Business Continuity
- Environmental
- Financial Risk Assessment
- Internal Control
- Investment Strategy
- Risk Management
- Social Media
- Tree Management

The Charity Working Group will review this list from time to time and may include or exclude LPC policies in accordance with the Charities governing documents and for the benefit of the Charities.

The Charity Working Group will consider recommendations from LPC or any of LPC's Committees on an ad hoc basis.

The Charity Working Group will review the Charities' governing documents and amend where necessary.

The Charity Working Group will meet a minimum of twice a year. These meetings will be exempt from public participation except where the business to be discussed is in the public interest and has not previously been discussed at a LPC Council or Committee meeting. The decision whether each meeting will be held in public will be made by the members of the Charity Working Group and will be decided by a simple majority vote.

Meeting 1 - December:

- To consider and approve annual budget prepared by the Finance Committee
- To receive reports from Facilities Committee and Finance Committee
- To review recommendations and proposals from Full Council and/or any of its Committees
- To consider and approve any policy changes

Meeting 2 – June:

- To consider and approve the annual accounts
- To appoint an auditor
- To receive reports from Facilities Committee and Finance Committee
- To review recommendations and proposals from Full Council and/or any of its Committees
- To consider and approve any policy changes

The Charity Working Group can hold extra-ordinary meetings at its discretion wherever deemed necessary.

Proposal Two

That LPC amend the Terms of References and activities of LPC and LPC's Committees to include:

Facilities Committee

- Change standing items on meeting Agendas to make distinct separation between LPC business and Charities business.
- Agenda and Chair to note that any decision made on items included as Charities business are to be made in accordance with the Charities' governing documents, rather than for the benefit of LPC as a whole

Finance Committee

- Change standing items on meeting Agendas to make distinct separation between LPC business and Charities business.

- To ensure that all accounting records for the Charities are kept distinctly separately to LPC Main accounts
- To ensure that budget setting and consideration for the Charities are kept distinctly separately to LPC Main budgets insofar as possible noting LPC largely subsidises Charity business.
- To ensure that budgets for Charities are recommended to Charity Working Group for approval
- That the appointment of auditors is made by Charity Workign Group for Charities' accounts (as a distinctly separate appointment from LPC)
- Agenda and Chair to note that any decision made on items included as Charities business are to be made in accordance with the Charities' governing documents, rather than for the benefit of LPC as a whole.

Highways Committee

- Agenda and Chair to note that any decision made on items included as Charities business are to be made in accordance with the Charities' governing documents, rather than for the benefit of LPC as a whole.

Project Review Group

- Agenda and Chair to note that any decision made on items included as Charities business are to be made in accordance with the Charities' governing documents, rather than for the benefit of LPC as a whole.

Review Committee

- All future policy reviews to be undertaken with the Charities in mind, as well as LPC
- Agenda and Chair to note that any decision made on items included as Charities business are to be made in accordance with the Charities' governing documents, rather than for the benefit of LPC as a whole
- All policy changes to be recommended to Charity Working Group for approval

Full Council

- Add standing item to Agendas to receive reports from Charity Working Group.
- Agenda and Chair to note that any decision made on items included as Charities business are to be made in accordance with the Charities' governing documents, rather than for the benefit of LPC as a whole.

Resources:

Reading for all LPC councillors

[The essential trustee - What you need to know](#)

[Councillors guide to a council's role as trustee](#)