

Allotments Stockport

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Guidance for Trustees

GUIDANCE FOR ALLOTMENT ASSOCIATION TRUSTEES

This guidance applies to trustees of allotment associations which are Unincorporated Associations (that is, not registered charities or companies or other forms of legal trusts).

Allotment association trustees are the people who serve on the governing body of an allotment association which consists of all of the plot holders of the allotment site. There will normally be a minimum of three trustees who may be known as Managing Trustees and who may also serve as Officers or committee members of the association. The principles and main duties are the same in all cases. These trustees are Lay Trustees, not Professional Trustees who are subject to stringent legal requirements.

For a Direct Lease (Self-Managed) allotment site, the Trustees are the Lease Holders of the site and are responsible for letting plots to plot holders and for all other duties and responsibilities in accordance with the site Lease Agreement.

The trustees have and must accept ultimate responsibility for directing the affairs of the allotment association – ensure that it is solvent, well run, and operates according to its constitution (governing document).

This will generally require the establishment of a committee elected or otherwise appointed by the members of the association to manage the association's affairs. The committee should have a Chair, a Treasurer, and a Secretary to serve as Officers of the association. These may also be trustees of the association.

Compliance – Trustees must:

- 1) Ensure that there is a constitution for the association and that a committee exists to manage the association's affairs in accordance with this constitution.
- 2) Ensure that the allotment association complies with requirements of the allotment Lease Agreements and that the association prepares Annual Returns or Accounts as required by its constitution.
- 3) Ensure that the allotment association does not breach any of the requirements or rules set out in its constitution and that it remains true to the purposes and objects set out therein.
- 4) Comply with the requirements of other legislation and other regulators (if any) which govern the activities of the allotment association. There are special legal requirements that apply to trusts and trustees of Registered Charities, Authorised Unit Trusts, Occupational Pension Schemes, and where land is acquired or other capital investments are made. Allotment associations would not normally be involved in these activities. However, large associations may wish to consider registering as a charity with the charity commission (which in 2011 requires a turnover of at least £5,000 per annum) in which case there will be some legal requirements.
- 5) Act with integrity, and avoid any personal conflicts of interest or misuse of allotment association funds or assets.

Duty of Prudence – Trustees must:

- 6) Ensure that the allotment association is and will remain solvent.
- 7) Use the association funds and assets reasonably, and only in furtherance of the association's objectives.
- 8) Avoid undertaking activities that might place the allotment association's funds, assets or reputation at undue risk.
- 9) Take special care when investing the funds of the allotment association, or borrowing funds for the allotment association to use.

Duty of Care – Trustees must:

- 10) Use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the allotment association is well run and efficient.
- 11) Consider getting external professional advice on all matters where there may be material risk to the allotment association, or where the trustees may be in breach of their duties.

If things go wrong

Trustees may be personally liable for any debts or losses that the allotment association may face as a result of things going wrong. This will depend on the circumstances and the type of constitution for the association. However, personal liability of this kind is rare, and trustees who have followed the requirements set out below will generally be protected.

Trustees Responsibilities

Before becoming a trustee you should take all reasonable steps to find out as much as you can about the allotment association, and about what will be expected of you as a trustee. You should get a copy of the allotment association's constitution and read it. If it isn't clear what it means, ask one of the existing trustees or the allotment association's Secretary to explain it.

Ineligible people: Those who have already been disqualified as company directors and those who have been convicted of an offence involving dishonesty or deception are some of the people who cannot usually become trustees. In some cases, people who receive benefits from the allotment association may also be ineligible.

Trustees are not entitled to receive any payment out of the allotment association's funds other than reasonable and necessary out-of-pocket expenses, such as the cost of travel to attend trustee meetings. Also, they must not benefit, either directly or indirectly, from the allotment association by, for instance: taking a lease of the allotment association's property, borrowing money from the allotment association or making contracts to do business with the allotment association unless that is explicitly allowed by the constitution and authorised by the committee.

Any trustee who abuses their position may have to make good any loss that results to the allotment association out of their own pocket and where such abuse results in a profit then they may have to pay the amount of that profit to the allotment association.

Resignation, removal, appointment, and replacement of trustees

On the loss of a trustee, a replacement trustee will normally be appointed by the remaining trustees and the management committee, subject to the provisions and requirements of the lessors (the Council) and the association's constitution. The Council and association members should be notified of any such change.

A trustee may resign their position by formal notice to the other trustees but will of course retain responsibility for their conduct whilst they were trustees. Where any trustee becomes ineligible or otherwise becomes incapable of fulfilling

their role as a trustee, they should be removed from office and replaced. A trustee may be removed from office by the other trustees (assuming there are enough of them to make a proper decision) and the association's management committee, in accordance with any provisions of the association's constitution.

Acknowledgments, sources of information and further reading

The information in this document is taken from a number of sources, in particular the following who are gratefully thanked. Though their guidance is primarily for registered charities, much of the content is relevant to the trustees of unincorporated associations.

The Charity Commission (www.charity-commission.gov.uk) publish guidance on their website for trustees of charities, and although allotment associations are not normally registered as charities, there may be advantages in doing so for larger sites having a turnover of at least £5000 per annum.

Community Matters (www.communitymatters.org.uk) is the National Federation of Community Organisations. Their Fact Sheet number 70 and others give a lot of information and guidance on trustees and other matters.

National Council for Voluntary Organisations (NCVO) (www.ncvo-vol.org.uk) publish information on the roles and responsibilities of trustees and have guidance on helping to find, recruit, induct and keep trustees and the recruitment of management committee members, members of the committee, etc.

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