**Guidance Notes: Charity Property Transactions**

**Background**

1. Charities in the UK often engage in diverse property transactions, similar to commercial organisations. These transactions may include acquiring, disposing, leasing, or granting licenses for property.

Such activities might be for operational purposes, investment, or fundraising. The legal and financial implications of these transactions are particularly important for charities due to the regulatory framework under the **Charities Act 2011**, as amended by the **Charities Act 2022**.

1. **Scope of Guidance**

This guidance outlines specific charity law requirements for property transactions, emphasising the amendments introduced by the **Charities Act 2022**. It highlights legal, financial, and procedural obligations while recommending professional advice, including solicitors and surveyors, to ensure compliance.

**General Requirements**

**3.1 Legal Powers and Restrictions**

* Trustees must ensure the charity’s governing documents permit property transactions.
* If powers are insufficient, an order from the Charity Commission may be necessary.

**3.2 Advice from Designated Advisers**

* Trustees must seek written advice tailored to the transaction type from a qualified professional.

**3.3 Best Interests and Best Price**

* Trustees must confirm the transaction serves the charity’s best interests and achieves the best reasonable price.

**3.4 Transactions with Connected Persons**

* Transactions involving “connected persons” (trustees, employees, relatives, etc.) require Charity Commission approval unless specific exemptions apply, e.g., short-term residential leases for employees.

**Taking Advice and Advertising Requirements**

**4.1 Designated Advisers**

* Advice can now be obtained from a wider range of professionals, including RICS, CAAV, and NAEA members, or qualified charity officers without conflicts of interest.

**4.2 Written Reports**

Reports must include:

* Land valuation.
* Recommendations to enhance property value.
* Marketing strategies.
* Terms ensuring the best possible outcome for the charity.

**Standard Property Transactions**

**5.1 Licenses**

* A license grants non-exclusive, temporary use of premises without the legal complexities of a lease.
* Common uses include short-term events, fundraising activities, or pop-up shops.

**5.2 Leases**

* Taking a lease obligates the charity to long-term commitments, requiring scrutiny of terms, rent, and obligations.

**5.3 Freehold Purchases**

* Trustees must verify suitability, affordability, and absence of legal or planning conflicts.

**5.4 Mortgages**

* Mortgages require trustees to obtain advice on necessity, terms, and repayment ability.

**Specific Legal Requirements**

**6.1 Statements in Property Documents**

* Transactions must include specific declarations per the Charities Act, confirmed by legal advisers.

**6.2 Short-Term Residential Leases**

* Since June 2023, leases for under one year to employees for residential purposes no longer require Charity Commission orders.

**6.3 Sales and Long Leases**

* These require designated advisers’ reports and proper advertising, unless exceptions apply.

**Templates and Practical Tools**

* Various template agreements are available for scenarios such as serviced office licenses, short-term event spaces, and tenancy at will agreements.

**Key Compliance Notes**

* Always seek professional legal advice for complex transactions.
* Maintain detailed records of trustee decisions to demonstrate due diligence.
* Ensure property documents include mandatory statements to safeguard both the charity and its trustees.

This guidance is essential for trustees navigating the complexities of property transactions under charity law, ensuring compliance and promoting best practices in property management.

**Granting Short Leases by Charities**

**9.1 Key Requirements for Short Leases**

* For leases of up to 7 years, trustees must:
	+ Obtain a written report from a designated adviser with relevant expertise.
	+ Ensure that the proposed terms offer the best outcome for the charity.

**9.2 Role of the Designated Adviser**

* The adviser does not need to be a qualified surveyor but must demonstrate relevant expertise.
* Charity employees or trustees can act as advisers if they meet these criteria and have no conflicts of interest.

**9.3 Residential Tenancies for Employees**

* Since June 2023, an order from the Charity Commission is no longer required for residential leases of up to one year provided to employees as part of their role.

**Selling or Transferring Freehold Property**

**10.1 General Requirements**

* Trustees must obtain a report from a designated adviser assessing the value, market conditions, and marketing recommendations for the property.

**10.2 Advertising Recommendations**

* Trustees should follow the adviser’s marketing recommendations or document reasons for deviations.

**10.3 Legal Documentation**

* Property sale agreements must include specific statutory statements confirming compliance with the Charities Act.
* The amended provisions of the **Charities Act 2022** simplify documentation requirements, enhancing legal protections for third parties acting in good faith.

**Mortgage Transactions**

**11.1 Financial Considerations**

* Trustees must ensure mortgage repayments align with the charity’s financial capacity and budget for potential interest rate fluctuations.

**11.2 Required Advice**

* Written advice from a qualified financial adviser is mandatory, addressing the necessity of the loan, its reasonableness, and the charity’s repayment ability.

**11.3 Legal Statements**

* Mortgage documents must include required certifications as per the Charities Act, reviewed and confirmed by legal advisers.

**Long-Term Leases**

**12.1 Requirements for Leases Exceeding 7 Years**

* Trustees must obtain and consider a detailed report from a designated adviser.
* They must ensure the lease terms are the best reasonably obtainable for the charity’s interests.

**12.2 Statutory Statements**

* Lease agreements must include updated wording as mandated by the Charities Act 2022 to confirm compliance with charity law.

**12.3 Recommendations for Advertising**

* Trustees should document marketing decisions and ensure transparency, especially when deviating from adviser recommendations.

**Ensuring Compliance with Legal Formalities**

**13.1 Inclusion of Statements in Documents**

* All property-related contracts must confirm compliance with statutory requirements.
* Updated statements, introduced by the Charities Act 2022, protect trustees and buyers by confirming the charity’s legal authority to undertake the transaction.

**13.2 Purchaser Protections**

* Good-faith purchasers are protected under the amended Charities Act provisions, reducing risks of legal disputes arising from omitted statements.

**Record-Keeping and Audit Trails**

**14.1 Importance of Record-Keeping**

* Trustees must maintain comprehensive records of all decisions and advice received for property transactions.
* These records demonstrate compliance and protect trustees from potential allegations of mismanagement or breach of trust.

**14.2 Audit Trails**

* A detailed audit trail should include:
	+ Minutes of trustee meetings.
	+ Written reports and advice from designated advisers.
	+ Documentation of marketing and valuation assessments.
	+ Rationale for trustee decisions, especially when deviating from recommendations.

**Summary and Best Practices**

**15.1 Compliance with Charity Law**

* Charities must adhere to Sections 117-123 of the **Charities Act 2011**, as amended, for all property transactions to avoid invalid transactions or trustee liability.

**15.2 Professional Support**

* Always seek advice from legal, financial, and property experts to ensure due diligence and regulatory compliance.

**15.3 Transparency and Accountability**

* Maintain clear records and audit trails to support decision-making and protect trustees from allegations of misconduct.

**15.4 Ongoing Review**

* Regularly review charity policies and property portfolios to ensure compliance with evolving legislation and best practices.

By adhering to these guidelines, charities can manage property transactions effectively, ensuring alignment with their objectives and safeguarding their trustees from legal and financial risks.

**Practical Scenarios and Examples**

To aid understanding, we outline practical examples of how the guidance applies to common property transaction scenarios involving charities:

**16.1 Example 1: Granting a Short Lease**

* **Scenario:** A charity owns an office building with surplus space and wants to lease part of it to a non-profit organisation for 5 years.
* **Action Steps:**
	1. Trustees appoint a designated adviser to provide a written report, including property valuation, market analysis, and recommended terms.
	2. Trustees consider the report, ensuring the lease offers the best terms reasonably obtainable.
	3. Trustees document their decision and ensure lease documents include statutory statements required under the Charities Act.

**16.2 Example 2: Taking a Temporary License**

* **Scenario:** A charity wants to hold a one-day fundraising event in a local park.
* **Action Steps:**
	1. The charity enters into a license agreement with the park owner.
	2. Trustees confirm the license terms are reasonable, ensuring the agreement is properly executed with correct charity details.
	3. The transaction is treated as a business arrangement, avoiding charity-specific property formalities.

**16.3 Example 3: Purchasing Freehold Property**

* **Scenario:** A charity plans to buy a property for use as a day center for beneficiaries.

**Action Steps:**

* 1. Trustees engage a solicitor and a designated adviser to assess the property’s suitability and value.
	2. Trustees confirm the purchase aligns with the charity’s objectives and budget.
	3. The solicitor ensures statutory statements are included in all acquisition documents.
	4. Trustees document their decision-making process and compliance with Section 122(8) of the Charities Act.

**16.4 Example 4: Sale of Freehold Property**

**Scenario:** A charity wants to sell a building it no longer needs.

**Action Steps:**

* 1. Trustees obtain a written report from a designated adviser, including valuation, marketing strategy, and recommendations.
	2. Trustees consider whether to advertise, documenting reasons for any deviations from the adviser’s recommendations.
	3. The sale agreement includes updated statutory statements to confirm compliance with charity law.

**Risks and How to Mitigate Them**

**17.1 Risks of Non-Compliance**

* Transactions may be void or voidable if statutory requirements are not met.
* Trustees may be held personally liable for breach of trust if decisions are not in the charity’s best interests.

**17.2 Mitigation Strategies**

* Engage qualified professionals to provide comprehensive advice on every transaction.
* Maintain a robust decision-making process with clear documentation.
* Ensure all legal formalities, including statutory statements and certifications, are adhered to.

**Updates and Legislative Changes**

**18.1 Ongoing Legislative Amendments**

* The **Charities Act 2022** introduced phased amendments, with changes taking effect in **October 2022**, **June 2023**, and **March 2024**.
* Trustees should stay informed about changes to ensure continued compliance.

**18.2 Monitoring Future Developments**

Trustees should periodically review legal advice and attend relevant training or workshops to stay updated on charity property law.

**Trustee Responsibilities: Final Checklist**

**19.1 Before the Transaction**

* Confirm legal powers under the charity’s governing documents.
* Obtain a written report from a designated adviser.
* Ensure the transaction aligns with the charity’s best interests and objectives.

**19.2 During the Transaction**

* Confirm all statutory requirements and formalities are included in agreements.
* Document decision-making processes, including reasons for deviating from advice.

**19.3 After the Transaction**

* Retain records of all related documents, advice, and decisions for future reference and audits.
* Periodically review the outcomes of the transaction to ensure continued alignment with the charity’s objectives.

**Conclusion**

Effective management of property transactions is critical for charities to ensure compliance with legal obligations, protect trustees from liability, and maximise the benefit to the charity’s beneficiaries.

By adhering to this guidance and seeking appropriate professional advice, charities can navigate property transactions with confidence and integrity.

Trustees are encouraged to use this document as a practical reference while ensuring they remain up to date with legislative changes and evolving best practices.

**Frequently Asked Questions (FAQs)**

**Do all charity property transactions require Charity Commission approval?**

No, most transactions can proceed without Charity Commission involvement, provided the charity complies with the requirements of Sections 117–123 of the **Charities Act 2011**. However, transactions involving "connected persons" or certain restricted circumstances may require Commission approval.

**Who qualifies as a designated adviser?**

A designated adviser can be a:

* + Fellow or professional associate of the Royal Institution of Chartered Surveyors (RICS).
	+ Fellow of the Central Association of Agricultural Valuers (CAAV).
	+ Fellow of the National Association of Estate Agents (NAEA).
	+ Trustee, officer, or employee of the charity with the necessary expertise and no conflict of interest.

**What should a designated adviser’s report include?**

* A valuation of the property.
* Recommendations on how to enhance its value.
* Marketing advice.
* Confirmation that the proposed terms are the best reasonably obtainable.

**Are there exemptions for short-term transactions?**

Yes, licenses and short-term leases (less than 7 years) typically have fewer formal requirements. Additionally, as of June 2023, residential leases of up to one year for employees no longer require Charity Commission approval.

**What happens if a transaction does not comply with the Charities Act?**

Non-compliance can render the transaction void or voidable, and trustees may be held personally liable for breach of trust.

**Key Resources**

To support trustees in property transactions, the following resources and templates are often beneficial:

**Template Agreements**

* Licenses for event spaces, pop-up shops, and serviced offices.
* Short-term tenancy agreements.
* Leases for shared office spaces or retail properties.

**Professional Bodies**

* **RICS** (Royal Institution of Chartered Surveyors): [www.rics.org](https://www.rics.org)
* **CAAV** (Central Association of Agricultural Valuers): [www.caav.org.uk](https://www.caav.org.uk)
* **NAEA Propertymark**: [www.naea.co.uk](https://www.naea.co.uk)

**Relevant Legislation and Guidance**

* **Charities Act 2011**: Governing charity property transactions.
* **Charities Act 2022**: Key amendments affecting property transactions.
* Charity Commission Guidance: www.gov.uk/charity-property

**Future Considerations**

**Evolving Legal Landscape**

Charities must stay informed of changes to legislation, such as amendments to the **Charities Act**, to ensure continued compliance.

**Environmental and Ethical Considerations**

Increasingly, charities are expected to consider the environmental and ethical impact of their property decisions, such as adopting energy-efficient buildings or ensuring accessibility.

**Digital Transformation in Property Management**

Charities should explore technology solutions for property management, such as digital records, compliance tracking tools, and property market analytics, to enhance operational efficiency.

**Final Note to Trustees**

Trustees play a critical role in safeguarding the charity’s assets, including property. By adhering to this guidance, maintaining thorough records, and seeking professional advice when necessary, trustees can effectively manage property transactions while fulfilling their legal and ethical responsibilities.

For any uncertainties, it is always advisable to consult with a solicitor or legal professional specialising in charity law to ensure full compliance and protection of the charity’s interests.