

# The status of Quaker property

## Guidance for Quaker trustees on assessing properties held by Quaker charities



### Introduction

The process of registering Quaker charities has highlighted different understandings of the status of some properties belonging to or linked to Quaker charities. It has raised the question of whether Meeting Houses and Burial Grounds should be classified as **restricted** funds (and therefore as charities in their own right) or as **unrestricted** funds (part of the “working funds” of the charity). This guidance seeks to help Quaker trustees address that question.

### Contents

**Part 1** sets out, in summary, the implications for trustees of incorrect classification of the property that they control and / or hold.

**Part 2** of this guidance explains the background and basis for the correct classification of property.

**Part 3** (The question and answer sheet) is intended to help trustees to correctly classify properties for which they are responsible. Even if you feel you already know the full extent of the property under your trusteeship and the trusts under which it / they are held, it is recommend that you consider the information in **Part 2** to ensure that if there are areas of uncertainty these can be identified and resolved through this process.

There is a **Glossary** at the end of the guidance to help trustees with unfamiliar terms.

# Part 1

## General

All trustees **must** have a full and accurate understanding of the trust(s) that apply to all the funds and property that they hold. This understanding is an essential starting point in order that Trustees can meet their legal duties and responsibilities. If trustees do not have such an understanding there are significant risks:

- 1. Breach of trust:** Trusts are legally enforceable. If trustees overlook or ignore trusts that apply to the funds and property that they hold they are failing in a fundamental trustee duty. Such a failure is known as a “breach of trust”. If a breach of trust results in a loss of charitable funds or other assets the trustees responsible for the breach may be personally liable to make good that loss (from their own pockets).
- 2. Inaccurate accounting:** Trustees are under a duty to report and account for the funds and property that they hold. The accounts, particularly, must represent an accurate view of the nature of the funds and property. A key responsibility is to identify correctly which funds and property are restricted (and endowed) and which are unrestricted. This requires a correct understanding of the trusts that apply to those funds and to that property.

## Quakers

- 1. Re-organisation:** The **beneficial owners** of most Quaker property are Quaker area meeting charities. Many Quaker charities are re-looking at their governance structures and forming larger Quaker charities. In some cases area meetings remain as informal structures within the ‘new’ charity. All property is owned by the charity. There are a few anomalies where a separate trust owns property.

**Friends Trusts Limited** is the **legal owner** of most Quaker property in Britain Yearly Meeting.

- 2. Schemes of the Charity Commission (England & Wales):** The process of change of trusteeship and of the objects for which property and funds are held will involve the Charity Commission making a “scheme”. The impact of re-organisation means that, in most cases, a scheme is necessary rather than merely optional. The “trusts” of charities that **in practice** are controlled by trustees must be updated because those trusts still refer to trustees under their previous collective name, or to defunct trustee bodies. They may also refer to Meetings that no longer operate, or have changed names.

The scheme for each linked charity is intended fully to replace the former “trusts” affecting the transferred property and restricted funds (e.g. to update the trustee arrangements). It should simplify the future governance

arrangements for the various charities linked to each Quaker charity (consolidating those arrangements into a single document). Unless there is a valid reason to do so, however, the scheme will not remove or modify existing restriction(s) resulting from the original trust for each fund or property: it will simply restate them considering any re-organisation of the charity or the wider Society of Friends.

The Commission has developed a “model” form of scheme that should enable the linked charities of each charity to be updated simply. A key requirement for this model, however, is to ensure that as far as possible there is correct information available about the assets under the control of the charity trustees, including whether those assets “belong” to the charity or constitute separate charities.

**3. Are properties restricted or unrestricted?** The question that has arisen in relation to property under the trusteeship of the charity trustees is whether it represents designated / endowment property **OR** whether it is unrestricted property that “belongs” to the charity. Some trustees have assumed the latter, but evidence held by the Commission strongly indicates the former. The correct classification of the property is crucial to trustees knowing:

- how the property can be used?
- how it should be accounted for?
- whether or not the property can be sold without the Commission’s formal authority?
- whether or not the proceeds of sale of the property can be spent?

For this reason it is considered essential that trustees attempt to classify all the property the charity holds. **This particularly applies to Meeting Houses and to Burial Grounds**, but may also apply to land held to provide income. This process must take place **before** a Scheme(s) is made for charities to be linked, because the classification of the properties will affect which charities should be included.

## Part 2

In (very) simple terms trustees of charities may hold two types of property/ funds:

- **restricted;** or
- **unrestricted**

(the terms used in the [Charities Statement Of Recommended Practice – “SORP”](#) – for charity accounts).

### Restricted property:

Property that is **restricted** can only be used in ways permitted, or intended, when the property was originally acquired. The restrictions may have been imposed by the donor of the property or agreed when the property was purchased. The property may be held “on trust” for a particular charitable use and / or with other restrictions (e.g. that the income, but not the capital of the property, can be expended). Typically, the “trust” for the property is declared in a written document, either the conveyance on acquisition or a separate trust document. That document is often referred to as “the trusts”, but “trusts” can exist in the absence of such a document (e.g. minutes of a meeting may record the “trusts” on which it has acquired property) or, rarely, in the absence of anything in writing at all.

### Designated or Specie property:

A “trust” for a particular use of property is, effectively, the “object” for which that property can be used. Property held “on trust” for a particular use was previously called “specie” property. The Charities Act 2006 uses the alternative term “designated” property (not to be confused with the same term in the SORP for charity accounting).

**At the simplest level the creation of a “trust” for a property result in there being a charity: a specie / designated property is (effectively) a charity in its own right.** As with any other charity those who manage the trust are bound by the “trust” (or object) and by other requirements / restrictions in the document which sets out the “trusts” affecting the property. The property is legally “ring fenced” to that use. If it is passed to trustees of an existing charity it must **not** be treated as if it forms part of the general purposes / working funds of that receiving charity.

Not every “trust” is a **registerable** charity, however. Property that is held and administered by or on behalf of a charity for any special purposes of that charity (and has its own governing provisions) is known as a “special trust”. It can be managed within another charity provided:

- the income from the special trust is below the threshold for compulsory registration (currently £5,000);

- the trustees are clear that the special trust represents restricted property and must be used / managed and accounted for separately from the general purpose funds of the AQM. They must look at the “trusts” of the property when deciding how to use and manage the property.

## Endowment

Some property is given without a use being specified, but with a “trust” that the capital value must be preserved. This form of restriction is known as an “endowment”. The donor’(s)’ intention is that the receiving charity can benefit from using the property (for any of its purposes) or from income generated from that property (e.g. rental income) but it must not spend the capital value of the property.

The trustees may be able to sell the property but are bound to invest the proceeds to generate income.

In some cases, donors provide that the capital may be expended provided a number of conditions have been met: This is known as **expendable endowment**. In other case the donors make no provision for expenditure of the capital: this is known as **permanent endowment**.

The Charities Act 2022 adjusted provision for permanent endowment restrictions to be removed, provided certain tests can be met. It raised the threshold, within which the trustees of a charity can decide the use of an endowment. The Charity Commission’s written agreement is usually needed for larger endowments to be released from their restrictions. Further advice about this can be found in the Commission’s guidance, which is available on its website.

### **Endowed specie or designated property**

It is not unusual for specie properties to also represent permanent endowment.

### Unrestricted property:

**Unrestricted property** is property given for the general purposes of a charity, with no restrictions imposed by the donors or property acquired using general funds. It “belongs” to the charity and can be used for any of its purposes. Ultimately the value of that property can be fully spent to further the charity’s objects. In the case of a Quaker charity, for example, it is property that is given on the understanding that the trustees would be free to sell it and fully expend the proceeds of sale in furthering the charity’s objects.

## Part 3

### Q1. What type of documents set out the basis on which a property is held?

#### Answer 1

In the case of land or buildings this will be the **original document that** transferred legal ownership from the original donor(s) or previous owner(s) to the original trustees. This is often referred to as a “title” document. Examples of such documents include:

- Will;
- Indenture;
- Lease or Assignment;
- Conveyance;
- Deed of gift.

Typically, these documents begin with a formula such as: “This Indenture/ Conveyance ... is made the ... day/ [date]”.

Some of these documents will merely transfer legal title (e.g. where the property has been purchased using unrestricted working funds of the charity, rather than representing a gift from a donor): this type of document does **not** create a (separate) charitable trust over the property and the properties concerned can be regarded as unrestricted working funds of the charity that acquired them.

If the funds used to purchase the property resulted from an Appeal, however, the position may not be straightforward, and the title document may not be sufficient evidence of the status of the property. Where properties were acquired through a series of different stages their status will require careful consideration. In such cases (Appeals or cumulative acquisition) advice may be sought from the Charity Commission.

Many of these documents, however, both transferred legal ownership to trustees **and** declared the trust(s) upon which the property is to be held. In some other cases there will be a separate deed (often entitled “Trust deed” or “Declaration of Trust” and possibly made on the same day as the title document) which identifies the property, refers to the transfer of title document, and states that the property is to be held by the trustees “(up)on trust” for specified purposes and uses. **These latter documents (together) represent the point at which the property was “settled” on trust for charitable purposes and the donor’(s)’ charitable intentions.**

There may also be subsequent documents that altered the basis on which the property is held (and by whom it is held). These include:

- A Scheme of the Charity Commission;

- An Order of the Charity Commission;
- A Deed (s) of appointment and retirement of trustees.

A Scheme may alter the original trusts **OR** replace them entirely. Orders and deeds of appointment generally would not alter the trusts.

To understand the **current** trusts affecting the property it is important to examine the original title documentation and any subsequent deeds or documents that detail the trusts.

## Q2. Where would you find these documents?

### Answer 2

One of the duties of charity trustees is to provide for the safe keeping of key documents, particularly documents that set out the trusts of the charities they administer (and this includes documents that prove the charity's ownership of property). Ideally the successive trustees of each property will have safeguarded the relevant documents and passed them to their successors. This should mean that they were included in the charity records transferred to the trustees by the previous trustees. Some of the deeds and documents are very old and the originals may have been lost or mislaid over time. If copies of deeds or documents are available these can be used to establish or help establish the true position. If, however, full records and documents were not transferred or have been mislaid there are some other places to look:

- If the land has been vested in **Friends Trusts Limited (FTL)** as custodian trustee the relevant documents) **should** have been filed with FTL. Please note that FTL is proposing to review the papers that it holds, to identify and copy relevant extracts of deeds for property linked to each area meeting. Please contact: [friendstrusts@quaker.org.uk](mailto:friendstrusts@quaker.org.uk).  
Please note that it is not inevitably the case that FTL, by virtue of acting as custodian trustee, will hold a copy of the document containing the trusts: it may only hold documents demonstrating ownership of the land.
- If the property appears to have been subject to scheme action by the Charity Commission (the "Commission") and the date of the scheme is known the Commission **may** be able to provide a copy of the scheme itself and **may** have copies of earlier documents referred to in the scheme. The Commission's records are limited however by the operation of its internal policy on record keeping and file destruction. Contact the Commission using its online guidance: <https://forms.charitycommission.gov.uk/>.
- If solicitors have provided property advice in the past, those seeking the earlier advice may have delivered original documents or copies to them for review and they may remain on file. The solicitors will also have a destruction policy

for old files etc. but sometimes files are retained after such dates and it is worth enquiring.

- The National Archive operates a directory – the ARCHON directory which assists local history research and identifies repositories in any area of the UK. Some information may be available there including information held by a local authority.
- The Land Registry may be able to supply copies of documents relating to adjacent land, even if the land owned is not registered. It may be that there are shared rights or a legal right of way over your land that is recorded on the adjacent title. It should be remembered that certain events (such as the appointment of a new trustee) will trigger first registration of land at the Land Registry. The Land Registry produces a series of practice guides to help with this process, including a guide covering situations in which registration is required but no deeds can be located.

### **Q3. What wording should you look for to find the “trust” / object, if any, which applies to the property?**

#### **Answer 3**

In the original trust documents the typical formulae marking the start of a “trust” would be found in the early clauses after the parties and any recitals. Wording such as:

- “on trust”;
- “upon trust”;
- “to be used”;

or other phrases of this kind usually precede the “trust” or object. Even if such a phrase is absent it is still possible for a trust to have been created. If a document is located that does not use such a phrase you should seek advice from suitably qualified legal advisors, or from the Commission.

If a Scheme has been made by the Commission the words “for the regulation of...” or “will govern” indicate that the scheme has replaced the original trust document(s). Within the Scheme the relevant clauses for identification of the trusts will be headed “objects” or “application of income/ property”. There may also be a clause indicating that property (usually identified in a schedule) is to be “appropriated for use for/ as ..”.



#### **Q.4. How can you know whether the property is specie property (and possibly also permanent endowment) or part of the general purpose property of the AQM?**

##### **Answer 4**

This is often not a straightforward issue but some help can be found in the trust documents. It is necessary to look at how the property is to be held. Consider whether:

- it to be held to be used/ appropriated for a specific charitable purpose (e.g. “as a Meeting House for the members of the Religious Society of Friends at ...”; or “as a Burial Ground for ...”). If this is the case it is likely to be functional or purpose property ( sometimes called “specie”);
- alternatively, is it to be held for the benefit of the main charity, without any restriction e.g. “upon trust for the .... Monthly Meeting of the Religious Society of Friends”. In this case it is likely to be unrestricted and held for the general purposes of the AQM

#### **Q.5. How do we know if the land or property is permanent endowment?**

##### **Answer 5**

This is also not a straightforward issue. If the trusts are unclear, it is necessary to look at each case on its facts, although there are various clues and factors to look for and to consider. Any one of these would indicate that there is possibly a permanent endowment restriction on the value of the property:

- The trust documents may say that the property is to be held “in perpetuity” or “forever”.

**Note:** If there **is** an explicit power to sell **and** a power to apply the proceeds (not merely income from invested proceeds) then there is no permanent endowment despite wording suggesting permanent trusts;

- The trust documents may not allow for a sale of the property and for the application of the proceeds of sale **or** the document may be silent on the issue.
- The trust document may declare functional or purpose trusts and may not (explicitly) allow for a sale of the property and the application of the proceeds of sale.

**Note:** There is a statutory power of sale (section 6 Trusts of Land and Appointment of Trustees Act 1996) that allows functional or purpose trust property to be sold **provided** all the net proceeds are applied to purchasing replacement property. That new property must be placed on the same trusts as the original property to complete the exercise of this power.

If there is no intention to replace the property then the statutory power of sale is not available to the trustees. If the trustees believe a sale is necessary (without replacement) they can apply to the Commission for authority to sell and to deal with the proceeds of sale. There is guidance about this on the Commission website.

#### **Q.6. Do you have to assess the property now, or can it wait?**

##### **Answer 6**

Assessment cannot wait. To fulfil the responsibilities of a trustee acting in the best interests of the charity the trustees must know the trusts that affect all the property they manage. This is to avoid acting in breach of trust and to allow them to account correctly for the property (see part 3). Re-organisation of the Society, together with registration (following the ending of the excepted status for Quaker charities, **expected by 2031**) has provided an opportunity to ensure that trustees of **all** Quaker charities proceed with clear and simplified governance (under the proposed schemes). Clarity about the trusts of property controlled by trustees is essential to this scheme process.

#### **Q.7. What if you can't find documents setting out the trusts of a property?**

##### **Answer 7**

If the trustees have taken all reasonable steps to identify the trusts of the property they control and have been unable to locate any evidence concerning those trusts, the Commission will adopt a pragmatic view of the terms upon which the property is held. In most cases, in the absence of evidence to the contrary, the Commission will accept a conclusion that the property is not permanent endowment.

#### **Q.8. Who can help us to assess the correct meaning of the documents?**

##### **Answer 8**

Trustees who need professional advice can properly use funds of the main charity to pay for such advice. If the trustees or their advisers are unsure as to the interpretation of charitable trusts and need assistance they may ask the Commission to advise.

Trustees are also advised to contact Quaker Life as a starting point to questions. There is staff support for general property and governance enquiries and specific advice on Friends Trusts Limited.

**General enquiries:** [supportmeetings@quaker.org.uk](mailto:supportmeetings@quaker.org.uk)

**Friends Trusts Limited:** [friendstrusts@quaker.org.uk](mailto:friendstrusts@quaker.org.uk)

## Glossary

NB these are the meanings of these terms as used in this guidance.

**“General purpose” funds:** These are funds which are free from restriction and can be held and used for the general purposes of the charity.

**“Restricted” funds / property:** These are funds or a property that has been given by a donor with a restriction attached as to how the money or property can be held or used. It may be held for a particular charitable purpose such as a burial ground.

**A “special trust”:** Is property held and administered by a charity for a special purpose. It may be registered as a separate charity.

**“Specie or designated property “:** An interest in land (freehold or leasehold) held by trustees for a specific charitable use and subject to a trust.

**A “trust”:** this is a purpose or object or requirement / restriction agreed at the point at which a donor passes property or funds to trustees. Trustees can also declare a “trust” over property without a donor trust.

**The “trusts”:** these are defined in the Charities Acts as “the provisions establishing (a charity) and regulating its purposes and administration. In practice there is usually a document made between the donor(s) and the trustees which contains a “trust” and may also set out powers and administrative arrangements.

**Unrestricted funds / property:** These are funds or property which have no restriction upon them and can be held or used (spent) by the trustees as they see fit in the best interests of the charity.

**Working funds:** These are the funds available to the charity for its day-to-day operation.