

Information Sheet on the K Fellfarers Lease Trustees and the National Trust Lease.

November 2021

Part 1. The Trustees - some questions answered

1. Why does 'K Fellfarers' need Lease Trustees ?

'K Fellfarers' does not own High House. The club leases the building from the owners, The National Trust. 'K Fellfarers' is an **Unincorporated Association of Members**. This means that the club is not recognised in law. It cannot, therefore, own or lease property itself and must nominate trustees to do so on its behalf.

2. How many Lease Trustees do we need?

Any legal transaction relating to High House must be signed by at least two trustees to be valid. In order to cater for contingencies it is normal for a club to have more than the minimum number. K Fellfarers has traditionally appointed four.

3. What does a Lease Trustee have to do?

In practice, very little. The Lease with The National Trust is renewed every 20 years and when that time comes around (*next in 2035*) all four Lease Trustees will probably work with the Committee to consider the existing Lease, decide whether it still suits the club or whether some clauses could be changed. The National Trust will do the same and there will be some correspondence, perhaps a meeting or two, and the new Lease when it is all agreed, will then be signed.

More immediately, during the intervening years, the Lease Trustees should satisfy themselves that the club complies with the terms of the Lease. As a minimum, the Trustees should consult once a year to check that the terms (see *Part 2. below*) are being met and report their views or questions to the Committee for appropriate action.

4. Are there any other Responsibilities ?

As the registered legal owners of the club hut the Trustees should satisfy themselves that the club complies with any relevant planning, health and safety and disability discrimination legislation and with the Occupiers Liability Act 1957 (which requires the club to take care that any visitors are reasonably safe for the purposes for which they are permitted to be there). *The BMC issues advice on such matters in the form of Hut Managers Guidance Notes.*

The Trustees may also, in theory, receive legal notices relating to the property (e.g. planning, health and safety, water extraction, boundary disputes, accident claim or disability discrimination, etc.) They must then act as necessary, giving notice to the club's committee, perhaps taking practical steps in an emergency, and co-operating with the committee in obtaining legal or other professional advice as appropriate. In practice, all such matters are generally dealt with by the Committee.

5. Will the duties change in the future?

No. If K Fellfarers wished to enter into another legal/financial transaction (e.g. purchasing or leasing another property, mortgage, etc.) they would also need Trustees for that transaction. The club could appoint new Trustees or, by mutual consent, use the existing Trustees. The existing Trustees would be under no obligation to be part of the new venture.

6. Are the Lease Trustees personally liable, financially, if something goes wrong?

No. The club carries civil liability insurance of up to £10 million (through its membership of the BMC) which covers all of its members in the event of a claim for personal injury. Any additional liability that the Lease Trustees incur relate only to the Lease itself. For instance, if the club does not comply with the terms of the Lease in such a way that the National Trust loses money and sues for damages, the Lease Trustees are liable, but only to the extent of the funds that the club has in its bank account. In other words, the Lease Trustees are not exposed to any personal financial risk.

Note, however, that all individuals have certain duties and responsibilities (e.g. duty of care). Trustees cannot evade or limit liability for criminal activity, including criminal negligence, which results in death or personal injury (*this is comparable to a driver having insurance to cover accidental damage but being liable to prosecution if found to be driving dangerously*).

7. What is involved in becoming (or ceasing to be) a Lease Trustee ?

At present any change to the list of four Lease Trustees has to be agreed at an Annual (or Special) General Meeting. When agreed, appointment is arranged by a **Deed of Appointment**. Any retirement (whether by resignation or removal) is by a **Deed of Retirement**. These deeds are prepared by the clubs legal advisor and simply require a few contact details and a signature.

Note that appointment of a Lease Trustee needs the agreement of the person involved but retirement does not!

8. What Rights do the Lease Trustees have?

Trustees have the right to insist on the committee's compliance with the terms of the Lease and with relevant statutes and regulations. If such compliance is not forthcoming a trustee has the right to resign and can do so by written notice with immediate effect.. The notice should be served on the club's president or chairman and copied to the other trustees.

9. In general, what sort of person does a Lease Trustee need to be?

Although there is little practical activity required, a Lease Trustee needs to be alert, responsible, reliable and trustworthy. He or she needs to be informed and involved in anything to do with the Lease, together with the running and upkeep of High House.

Part 2. The National Trust Lease

Introduction

On the very first meeting with the National Trust it was agreed that we could either adapt the existing lease or start from scratch to produce a new document "in modern plain English". After due consideration it was agreed that to start from scratch would be the only option. The current lease is, in general, a much simpler document than previous versions. Many of the archaic legal terms and long rambling clauses used in the '94 document have been removed.

This is a brief summary of the main document (The Lease itself) of the two which make up the agreement between the National Trust and K Fellfarers, with some explanatory notes (the second document is the agreement to allow the NT to use High House for two weeks each year, not dealt with here).

These notes are not intended to replace the Lease as a source of reference wherever detailed consideration is required but can be used as a general guide and as a means of locating specific items in the Lease.

Summary of the Lease

The first 7^{1/2} pages contain the legal formalities:

Page 2-3. Preamble.

Page 4. Contents.

Page 5-8. **Section 1 - Definitions, Section 2 – Interpretation and Section 3 – Letting**

Partway down page 8 is the beginning of the meaningful part of the document:

Section 4 – Rights Granted to the Tenant

This lists the things that the NT will allow us to do:

4.1. Use the property.

Note 1. The 'property' is quite a small parcel of land as shown on the accompanying plan, not the larger area defined by walls and fences on the ground.

4.2. Use the access road.

4.3. Use the public utilities (in our case electricity only).

4.4. Use the water supply.

4.5. Use the drainage.

Section 5 – Rights Reserved to the Landlord

This lists all the things that remain the property of the Trust: minerals, hunting rights, archaeological specimens, trees etc. plus their right to enter the property when required.

Section 6 – Payment of Rent and other monies

This lists our financial liabilities under the lease. We must pay:

- 6.1. Rent (and interest on unpaid rent).
- 6.2. NT costs for anything we may wish to do that involves lawyers, surveyors etc.
- 6.3. NT costs if we fail to meet certain terms of the lease.
- 6.4. Rates, utility bills etc.
- 6.5. NT costs if we fail, by neglect or by deliberate act, to meet other terms of the lease.

Note 2. It also allows both parties to end the lease if the water supply fails and cannot be reinstated. In that unlikely event KFF would probably not want to continue to inhabit High House anyway.

Section 7. Repairing and Decorating the Property

This establishes that we are responsible for all maintenance and repairs (except those covered by the NT insurance) to High House. It also details what will happen if we fail to carry out those duties.

A new feature is a schedule (**Schedule 2**) at the end of the document which lists the building elements in detail. It also requires us to inform the NT of any defect or damage to our or adjoining property.

Section 8. – Caring for the Property

We must:

1. Only use NICEIC electricians.
2. Protect plumbing from frost damage.
3. Replace damaged or worn out fixtures and fittings.
4. Have a HETAS contractor sweep the chimneys every 6 months.
5. Report woodworm, dry rot etc.
6. Carry out fire protection work as necessary.
7. Provide and maintain fire protection equipment.
8. Keep the grounds tidy.
9. Empty the septic tank when required.
10. Service the water purification plant.
11. Tell the NT if the water fails the purity test so that they can supply bottled water.

Note 3. The NT are now responsible for the water supply, including all pipes and the holding tank outside the building. The NT will supply bottled water if the system fails.

Section 9. Using the Property

This lists our general obligations:

- 9.1. Lists those people who are allowed to use High House.

Note 4. The “committee/club warden or hut booking secretary” are able to decide on suitability of persons or groups wishing to stay there.

- 9.2. Lists banned activities:

1. Letting to lodgers
2. Various undesirable purposes.
3. Barbeques other than with bottled gas (which may not be stored there).
4. Light more fires or create new firepits.
5. Use various heat-producing tools (listed) when working there.
6. Park unauthorised vehicles (listed) there nor allow camping on a permanent basis.

Note 5. KFF can decide whether the vehicles are authorised or not and camping is now allowed as long as it is not permanent.

7. Hang anything (washing, signs etc.) outside in public view.
8. Leave untidy equipment etc. in the grounds.
9. Observe the law on protecting bats.
10. Political meetings.
11. Commercial photography or filming.
12. Damage the Water supply or drainage system.
13. Use a chimney without permission.
14. Use free-standing liquid, gas or electric bar fires.
15. Put up blinds or shutters.

Section 10. Altering the Property

10.1 states that we may not alter the property.

Note 6. This does not mean what it says but is the legal way of preventing us from establishing the presumption of a right to carry out alterations. The NT have, however put it in writing that we can make such alterations with the prior approval of the Trust; they just don't want it written into the lease.

Section 11. Dealing with the Property

This states that ownership or occupation of all or part of the property cannot be passed to someone else unless (a) we have to appoint a new trustee or (b) we hire the building to others as set out in 9.1.

Section 12. Complying with Legislation

This states that we are responsible for complying with all legislation relating to High House. We must also inform the NT of any such legislation. It also states that we cannot apply for planning permission for the property.

Note 7. The point made in note 6 also covers applying for planning permission.

Section 13. Insuring the Property

The NT insures the building and, in the event of a claim, must spend the insurance money on the building. For our part we must:

1. Inform the NT if we are of any circumstances that might lead them to claim on their insurance.
2. Pay a contribution towards reinstatement.
3. Pay the whole cost if it is not an insured risk.
4. Ensure that we don't invalidate their insurance.
5. Not insure the building ourselves.
6. Maintain Public Liability Insurance of at least 5 million pounds.

If the building becomes uninhabitable for a while, the rent will be adjusted accordingly.

Section 14. Notices

We must keep the NT informed at all times of anything relevant to the property or its surroundings.

Section 15. At the End of the Term

This describes how we must leave the property if we ever depart from it.

Section 16. Ending the Lease if the Tenant is at Fault.

This lists all the reasons for which the Trust may end the lease.

Section 17. Break Clause

This limits our liability for paying the rent to 5 years maximum in the event of voluntary default on our part.

Section 18. Various other matters

This lists various legal caveats, the most important to us being clause 18.6 which says that if the NT have any claim against KFF for breach of the lease, they can only pursue that claim to the limit of the funds held by KFF. The Trustees are not personally liable.

Schedule 1 – Rent Review

This is 4¹/₂ pages of financial and organisational details relating to the NT's requirement to ensure that the rent keeps pace with inflation.

Schedule 2 – Repairs and Decoration

This lists the items which the NT must keep in good repair (the water supply outside the building) and those which KFF must maintain (everything else).

Note 8. The list is quite detailed and it is recommended that the Hut Sub-committee carry out regular checks to ensure that we comply with its requirements. Note in particular that clause 1.5 of the schedule requires KFF to give 14 day's written notice before the carrying out of any works listed.