



## **Due Diligence and Squirrels in Northern Ireland**

**Guidance on the transition of Squirrels from independent charities into Scout Groups**

**May 2021**

## Welcoming Squirrels to Scouting...

In July 2020, the Trustee Board of The Scout Association took the decision to create early years Scouting for four and five year olds. This followed two years of piloting in England and, more importantly, 25 years of hard work and dedication by volunteers in Northern Ireland who delivered Squirrels.

So that Squirrels can be welcomed into The Scout Association from September 2021, each individual Squirrel Drey will need to formally merge with its corresponding local Scout Group. Part of any merger involves both charities considering if a merger is in the best interests of their charitable objectives. The process in which charities consider this question is known as *Due Diligence*.

The Scout Association, in partnership with Scouts NI and the Northern Ireland Squirrel Association, created a *Due Diligence Questionnaire* and asked all Dreys to complete it. This guidance note can be used by Trustees of Scout Groups when reviewing these responses.

We recognise that Dreys are simple charities. They are unlikely to have many assets, buildings, land or employees. However, it is important as Scout group Trustees that you still give full consideration to these issues, and can prove that you have done so. We hope this guidance, alongside the *Due Diligence Questionnaire*, helps you to do just that.

The Scout Association cannot offer formal legal advice to Scout Groups or Dreys. You may need to seek your own independent legal advice if you have concerns or specific questions. However, we want to make this as easy as possible for you as local volunteers, so you can [find all of our guidance here](#), and [ask additional general questions here](#).

Thank you for the time you are giving to this process. We know that you are already busy, and focussed on recovering from the impact of COVID-19. Your efforts will mean that young people have even more opportunities to develop skills for life by becoming part of the world wide family of Scouting.

### 1. What is the purpose of this guidance note?

This guidance note can be used by the trustees of each local Scout group charity in Northern Ireland (Scout group) to review the *Due Diligence Questionnaire* responses for the local Drey group charity in Northern Ireland (Drey group) that will be merged into a Scout group.

This is only generic guidance on how to approach reviewing some of the key questions, basic and practical legal issues relating to the structure and the purpose of due diligence, how to approach it and the key issues for consideration. This document does not comprise legal advice and each Scout group should obtain separate independent legal advice if it has any questions on how to approach a legal point. This note flags some of the situations in which it may be necessary to consider getting independent legal advice.

### 2. Why a due diligence process is necessary?

The due diligence process has two important purposes:

1. It allows the trustees of the Drey group and the Scout group to comply with their trustee duties to manage their charity's resources properly and act in the best interest of their charities; and
2. It will reveal whether any particular legal steps need to be taken in order to give effect to the merger (e.g. if there is land to be transferred).

### 3. How do I review the responses by the Drey group?

A due diligence process was undertaken whereby Drey groups were issued with a *Due Diligence Questionnaire* for completion and return to The Scout Association. The responses that have been provided together with accompanying documents relate to the Drey group that will be merged into a particular Scout group. Please review the responses and documentation provided.

You can ask the Drey group further questions if you need to obtain further information to understand the position.

When reviewing responses and documentation, it is worth bearing in mind the following key points:

1. Does the response suggest that there will be additional legal formalities required to give effect to the transfer, e.g. to transfer land or employees?
2. Does the response provide cause for concern? For example, does the response note that there is litigation in progress or that any concerns have been raised against the Drey group in relation to safeguarding?

#### 4. What if I have questions?

The Scout Association will not be able to give you legal advice. It is open to the Drey group and local Scout group to seek their own independent legal advice if they wish to do so, and we hope and the *Due Diligence* Questionnaire and this guidance note will help you minimise any legal costs you need to incur.

We are providing a number of other methods of support:

- You can [find all our guidance on this dedicated page](#). It includes frequently asked questions, webinars we have already held, templates, guidance notes and a table showing where your Drey and Scout Group are in the merger process.
- The page [includes a form to submit any question](#) you may have. As we cannot give legal advice, we unfortunately may not be able to help. But we might know where others have asked the same question.
- We will be holding more regular check in webinars throughout this process where you can ask any clarifying questions about this guidance and the process.

# Reviewing Questionnaire Responses

## 1. About your Drey group

(a) **What is the name of the Drey group?**

If you are not familiar with the Drey group you should enquire with the Drey group to confirm if there has been a mistake.

(b) **What is the name of the Scout group you would merge with?**

If this is not the name of the group you should enquire with the Drey group that has completed the Due Diligence Questionnaire.

(c) **Who is completing this questionnaire on behalf of the Drey? Please provide your name, role (within the Drey), email and telephone number.**

If you are not familiar with the person or information provided you should enquire with the Drey group that has completed the Due Diligence Questionnaire.

(d) **Trustees: Please**

- **provide full names of the current trustees of the Drey;**
- **confirm if any changes of trustees are expected to arise between now and 1 September 2021; and**
- **indicate if any of the current trustees are also trustees of a Scout group or another Drey.**

If you are not familiar with, or have concerns, about the persons or information provided you should enquire with the Drey group that has completed the Due Diligence Questionnaire.

If all, or some of, the Trustees are the same for the Drey group and your own Scout Group this will create a conflict of interest for them in any decision relating to the merger. If it is possible to manage that conflict of interest, so that both the Drey and your Scout Group can still make a decision regarding the proposed merger in compliance with their own constitution, without those Trustees involvement, then no further action will be needed.

If the conflict cannot be managed as above then the consent of the Northern Ireland Charities Commission will be required for the merger. This is to ensure the Transfer Agreement is in the best interests of both charities.

TSA have engaged a firm of Northern Ireland solicitors to progress this matter of consent with the Northern Ireland Charity Commission, and with a view to seeking a bulk consent for any Drey groups or Scout groups to which this may apply. We will provide more information in due course.

(e) **Please confirm if the Drey group currently uses the NISA model constitution. If not, please provide a copy of the constitution.**

The model Drey group constitution allows for the Drey group to transfer their assets to the Scout group. If the Drey group has a different constitution then you need to check:

- Its objects/purposes clause to check that it has objects which are compatible with TSA's objects "to promote the development of young people in achieving their full physical, intellectual, social and spiritual potentials as individuals, as responsible citizens and as members of their local, national and international communities"; and
- That it includes a power to transfer its assets to the Scout group, e.g. a power to make grants or a power to merge or amalgamate with another charity.

(f) **Is the Drey group registered with the Charity Commission in Northern Ireland?**

- **Please give its charity registration number.**
- **Have you had any correspondence with the Charity Commission for Northern Ireland other than at registration or when filing annual reports?**

If the Drey group is registered with CCNI then after the merger, steps will need to be taken to remove it from the register. This is a matter that NISA are advising Dreys upon and is a matter that Scout Groups will need to ensure they are satisfied has taken place post merger.

## **2. Contracts**

(a) **Does the Drey group have any contracts with third parties? If not, please go to question 3.**

You should make sure that any contracts to which the Drey group is a party can be transferred into the name of the Scout group.

We assume that any agreements which the Drey group has entered into are likely to be relatively informal and low value, e.g. in relation to room hire. If this is the case, we would recommend that you ask the Drey group to write to the other party and let them know about the merger and state that from 1 September 2021 the Scout group will replace the Drey group as the party to the contract. This approach may not result in the contract being legally transferred, but will often be sufficient where the contract is of low value, the Drey group has a good relationship with the third party and/or it is difficult to conceive of a situation in which the contract would ever need to be legally enforced.

If the Drey group identifies any contracts where it is very important that they are validly transferred to the Scout group (e.g. because they entitle the Drey group to significant funding) you should check the contract to see whether it allows for the contract to be assigned (i.e. formally transferred to the Scout group). You will probably need the consent of the third party to assign the contract.

We will provide template letters for this communication with third parties later in the process.

(b) **Please give details about these contracts including:**

- **Contract Type: (Hall Hire Agreement, Contract with a supplier e.g. cleaner, grounds keeping, storage space, utilities, Funding Agreement under which the Drey gets grant funding, Other - please give details)**
- **Value: How much does the Drey pay/receive under the agreement each year?**
- **Term: How much notice needs to be given to bring the Agreement to an end?**
- **Notes: Please note anything which the Scout group should be aware of in relation to the contract e.g. if it is essential to the Drey's activities or it has any provisions you've found onerous**

If you have particular concerns about the responses to this enquiry you should look to resolve them with the Drey group.

## **3. Finances**

- (a) **Does the Drey group have any outstanding debts or liabilities? If yes, please provide details including: the amount outstanding, who the debt is owed to, the date by which this must be paid and whether the Drey group has sufficient funds to pay it.**

The key here is to make sure that, if the Drey group has any debts, it has sufficient funds to pay these off. It is unlikely to be in the best interests of the Scout group to accept the transfer of the Drey group's undertakings if its liabilities are more than its assets.

If there is a debt which cannot be covered by the Drey group's assets then this should be excluded from transfer in the Transfer Agreement and we will issue more guidance on how to do this later in the process.

- (b) **Are there any items of significant expenditure (over £100) to which the Drey is committed? For example, the cost of an upcoming trip or new equipment. If so, please provide details of the purpose of the expenditure and the level of cost involved.**

As above, you need to make sure that the Drey group has sufficient funds to pay for this.

- (c) **Please provide a copy of the annual budget of the Drey (if one exists) and of the most recent annual accounts, trustees' annual report and annual monitoring return for the Drey.**

You should look at these documents to ensure that the Drey group is solvent and its assets are greater than its liabilities. If that was not the case it would be something your Trustees would need to consider carefully in making their decision to take the Drey group on as it is material to whether the merger is in the best interest of your charity.

#### 4. Fundraising

- (a) **Are there any regular payments made to the Drey group (e.g. regular givers who make their donation by way of direct debit or standing order) other than payments of subs from the parents of members?**

After the transfer, you will need to write to parents/guardians to ask them to change the bank details on their direct debits to the details of the Scout group.

If the Drey group receives other standing orders/direct debit donations, they should speak to their bank to find out whether it will be possible for these to be transferred over to the Scout group's bank account.

Alternatively, they could speak to the donors to ask them to change the bank details in their direct debit/standing order to the Scout group's bank.

- (b) **Has the Drey received any legacy (where funding is left to the Drey in someone's will) income in the past 5 years? If so, please provide details.**

The merger will need to be registered with the Charity Commission which should ensure that any future legacies can be received by the Scout Group.

- (c) **Are any Gift Aid declarations made in favour of the Drey group? If so, please give details of the number of gift aid declarations the Drey group currently has.**

Our lawyers have had confirmation from HMRC that when Charity A merges into Charity B, Charity B can continue to use Charity A's gift aid declaration forms in respect of existing donors. Following the merger, you should ensure that any gift aid declarations are made in the name of the Scout group.

#### 5. Assets

- (a) **Do you have any reason to believe that any of the Drey group's assets (including cash or land) are held as either restricted funds or permanent endowment? If yes, please give details.**

- "Restricted funds" are donations/ grants given to the charity on the basis that they will be spent only on a particular purpose. The restriction is legally binding and must be complied with. This is different from "Designated funds" which are unrestricted funds that have been earmarked or designated for a particular use by the trustees.

- **“Permanent endowment” is land, investment or other assets which are given to a charity on the basis that it must hold the asset permanently and can only spend the income earned from the assets and not the capital.**

If the Drey group holds any assets as restricted funds or permanent endowment, these assets will continue to be subject to the same restrictions following the transfer. Wording will need to be included in the Transfer Agreement to reflect this and we will provide more information about this at a later stage in the process.

## 6. Safeguarding

- (a) **Have there been any safeguarding concerns, personal injury incidents (aside from minor slips and trips) incidents or abuse claims that the trustees are aware of at any time in the Dreys’ existence? Please give details of any concerns or incidents that you are aware of even if these pre-date your involvement as trustee. If so, please provide full details (but do not include names) and documentation.**

The purpose of this question is to get a sense of whether there might be any risk of a historic abuse claim coming to light in relation to the Drey group. If any follow up discussions with the Drey regarding their response to this *Due Diligence Questionnaire* results in any further information or concerns not initially documented by the Drey in their *Due Diligence Questionnaire* response please notify TSA.

- (b) **Are all current volunteers Access NI checked?**

If current volunteers are delivering programme to young people and have not been checked by Access NI then you will want to explore how compliant the Dreys wider safeguarding practices have been to date. It will be the responsibility of the Scout group post-merger to ensure all policies of The Scout Association are enacted.

## 7. Properties

- (a) **Does the Drey group own, use or occupy any property? If not, please continue to question 8.**

If the Drey group owns freehold or long leasehold property it is likely that the Scout group will need to obtain legal advice on how to effect the legal transfer of the property/properties to the Scout group.

- (b) **Please give details about these contracts including:**

- **Name of the property(s)**
- **Your interest in the property(s):**
  - **Freehold (i.e. the Drey owns the property outright)**
  - **Leasehold (i.e. you have a formal lease to use the property) or**
  - **Licence (i.e. you have a more informal right to use the property which is also used by other organisations, such as renting use of a space regularly or being given the space in kind)**

As above, if you have particular concerns that you are unable to resolve with the Drey group you may have to seek independent legal advice.

- (c) **Where your interest in the property is “Leasehold” or “Licence”:**

- **Do you have a written agreement in relation to your use of the property? If so, please provide a copy.**
- **the landlord’s/licensor’s permission needed for transfer of the lease or licence/rent to the Scout group?**

If the Drey group is unable to provide a written agreement, or if you have particular concerns that you are unable to resolve with the Drey group, you may have to seek independent legal advice.

(d) **Where your interest in the property is “Freehold” or “long term Leasehold Property” (i.e it is for a term more than 25 years):**

- **Is title to the property registered or unregistered? If registered, please give the title number.**
- **Is the property mortgaged or subject to a charge?**
- **Who holds the title deeds to the property?**
- **Have elections been made to charge VAT on leases granted to and by the Drey (i.e. does the Drey have to pay VAT on the rent)?**

If the property is subject to a mortgage or charge, you should look to resolve this with the Drey group and if necessary take independent legal advice. It may not be advisable for you to receive a property that is subject to a mortgage or charge.

## **8. Physical assets/equipment/cash**

(a) **Please give brief details of any assets including cash which the Drey holds over the value of £50 e.g. equipment for activities, tents, minibus.**

The purpose of this question is to make you aware of the physical assets of which the Scout group will take possession.

Any cash transferred to the Scout Groups will need to be used for the purpose of the squirrel section. Money will need to be held in an account in the name of the Scout Group, as after the merger the Drey group will no longer exist.

## **9. Litigation and Disputes**

(a) **Are there any existing or threatened action, litigation or formal dispute resolution or arbitration relating to the activities of the Drey (whether as claimant or defendant) or any circumstances which may give rise to litigation, formal dispute resolution or arbitration?**

The purpose of this question is to confirm if there are any existing claims or risk of a claim coming to light in relation to the Drey group. If any follow up discussions with the Drey regarding their response to this Due Diligence Questionnaire question results in any further information or concerns not initially documented by the Drey in their Due Diligence Questionnaire response please notify TSA.

(b) **If so, please provide details.**

See above

## **10.Data**

(a) **Please confirm that the Drey group complies with the NI Squirrel Data Protection Policy and procedures: <https://www.scoutsni.org/squirrels/drey-support-material>**

We will provide further information later in the process on how to comply with data protection rules when transferring data held by the Drey group to a Scout group. We assume that all of the Drey groups will hold similar data (about members, parents/guardians and volunteers).

(b) **Please provide details of any personal data held by the Drey group other than registers, details of members and parents and details of volunteers.**

If the Drey group holds data you would not expect a Scout group to hold then consider your responsibilities under relevant legislation before agreeing to the transfer of that information.

## **11. Insurance**

(a) **Please provide details of:**

- **All existing insurance policies which the Drey group has rights in or under.**
- **All current claims made under any of the Drey group's insurance policies.**
- **Any anticipated or prospective claims which may be made (including the possibility of any historic claims from a particular class of persons).**



- **Please upload any and all insurance documents you have on record.**

If the Drey group has any of its own insurance policies (which are not umbrella policies taken out by the Northern Ireland's Squirrels Association), please notify The Scout Association.

**(b) Please provide details of all historical insurance policies for which you have records of**

- **Period of cover**
- **Insurance provider**
- **Please upload any associated documents you have available**

This documentation will allow you to see if there are any periods where the Drey group was not insured, or if there were any historical accidents or incidents that you need to explore further.

## 12. Employees

**(a) Does the Drey group have any employees or paid consultants? If not, please continue to question 14.**

If the Drey group has its own employees, it will be necessary to carry out a *Transfer of Undertakings (Protection of Employment)*, often known as "TUPE", process in order to transfer them to the Scout group and you will need to take legal advice in relation to this.

We believe it is very unlikely that the Drey group will have any employees, but it is important that you have confirmed this.

**(b) Please provide details of all employees employed by the Drey including their**

- **Name**
- **Address**
- **Age**
- **length of continuous service**
- **salary (amount and date and frequency of payments)**
- **contractual entitlement to benefits and periods of notice to be given by the Drey**
- **Confirm your understanding that consultation with employees to be transferred to the Scout group should be commenced as soon as possible in order to comply with the *Transfer of Undertakings (Protection of Employment) Regulations 2006.***
- **Please provide details of any self-employed contractors routinely engaged by the Drey.**
- **Identify any claims, disputes, litigation or arbitration relating to employees or ex-employees of the Drey.**
- **Confirm whether or not you have investigated what changes are needed to stakeholder pensions or other pension arrangements in relation to the transfer of the Drey to the Scout group. It is crucial that the pension implications of the transfer are addressed at an early stage.**

This information would allow you to consider if employees are being treated fairly and appropriately during the transfer of their contracts, and for you to understand what obligations your Group would be taking on in any staff that transfer.

## 13. Other

**Does Are there any matters that have not been covered earlier in this questionnaire, or that you would like to emphasise or detail further, that are important for the operation of the Drey and that you believe should be brought to the attention of the Scout group Trustees before agreeing to merge?**

This section shows that you have invited any other information that would have been relevant in your consideration of a potential merger. If this raises any concerns then you may need to seek independent legal advice.