



Charity Bulletin

The legal needs of charities are very varied and are growing all the time. In recognition of this Rollit Farrell & Bladon has developed a specialist Charity Group to offer a co-ordinated service to charities. Partner Ros Harwood who practices exclusively in charity law heads up the Group. She specialises in all areas of charity law, and has experience in advising all types of charities.

The Charity Group comprises individuals drawn from various disciplines across the firm, not only charity law, but also employment, property, company and commercial, litigation, trusts and tax and social housing - all areas where charities now need specialist advice. By having a dedicated group we feel we are much better able to serve the needs of all our charity clients.

Should Charities Incorporate?

Trustees of unincorporated charities are becoming more aware of the real risk of personal liability they may incur. Not only are charities living in an age of contract culture, but the value of these contracts is greater and charity trustees find themselves exposed to greater risks.

If your charity is unincorporated and owns land, employs staff and enters into contracts, have you considered what personal liability your trustees may suffer?

Imagine a former disgruntled employee making a claim for racial, sexual or disability discrimination. Unlimited compensation is payable for such claims. If the charity has insufficient funds to finance a payment, together with all the associated professional fees, the trustees may find themselves having to pay out of their own pockets.

If a charity is a company, then any such claim would be made against the company and not the individual trustees. The company would be liable to pay any such claim as opposed to the individual trustees. Directors or trustees of a company will not generally be personally liable to outsiders for actions that they are authorised to undertake in the name of the company.

Other advantages of incorporation include the vesting of all property and assets of the charity in a company. This makes it no longer necessary to alter title on any change of trustees. Also depending on whether it is the charity as a whole which is incorporated, or whether it is a corporate trustee which is appointed in place of the individual trustees, there is the advantage of having a democratic structure, and generally wider and more flexible powers (with borrowing made easier).

The general term "incorporation" can mean incorporating the charity as a whole by establishing a company limited by guarantee which is the charity. Or, it can mean appointing a corporate trustee in place of individual trustees. If an existing unincorporated charity has permanent endowment (investments or property which cannot be spent or sold without replacement) then there are certain requirements which must be followed on incorporation, but incorporation in one form or another can still take place.

Generally, where charities employ staff, own land and property or enter into third party contracts, it is regarded as an advantage to incorporate or replace existing trustees with a corporate trustee.

Why not take out indemnity insurance you may ask? Indemnity insurance policies have not yet been tested in the courts, so to reduce the risk to trustees by incorporation as opposed to relying on the tenuous protection of insurance policies would seem to be far more sensible.

The question individual trustees have to ask themselves, is whether they are happy sleeping at night knowing that they are the trustees of an unincorporated charity as opposed to an incorporated charity.

NEW APPOINTMENT

We are pleased to announce the appointment of Ros Harwood as a Partner and Head of the firm's Charity Group. One of the country's leading charity lawyers, Ros joins us from London firm Speechly Bircham where she was head of their Charity Practice and is named as a leading individual and legal expert in legal directories. She is also Secretary of The Charity Law Association.



Ros Harwood.

Ros says "I cannot believe how lucky I am to have found a firm like Rollits - I have the same quality of work I was getting in London, but also a much better quality of life. Being able to charge both national and local charities a fraction of the cost London lawyers charge, makes me feel far more comfortable and I am sure our charity clients are not complaining either!"



Merger Mania

With over 180,000 registered charities in existence it is hardly surprising that there has been a noticeable increase in the number of charities deciding to merge, or become closely associated with another charity.

Are you finding it difficult to compete in the funding market? Does your charity need to improve the use of its resources - human and otherwise?

Could your charity operate more efficiently if it streamlined operations?

In some cases charities may wish to avoid duplication of accounting, administration and compliance letters if they find themselves working closely with another charity - if they do - merger may be the solution.

Sometimes a decision to merge, may not be one of choice but the only viable solution to the survival of a charity and its good work.

Undoubtedly, there are a number of issues to consider before, during and after the merger process - not only legal but practical issues.

Careful choice of a partner or partners is essential as is a thorough assessment of financial issues. From a legal point of view, the trustees will need to ensure that the merging charities have similar objects, or failing that, at least a power to amend.

Are there appropriate powers in your charity's governing document to actually effect the merger itself? Is there any property to transfer? How will staff contracts be dealt with? Will the charity transferring its property to the successor charity, give any indemnities or assurances? If it does, will they have any value in practice?

All these questions and many more will need to be asked and answered if the merger is to be a success.

In some cases, it may be necessary to approach the Charity Commission for their consent to the merger. Careful consideration of a governing document of the merging charities will confirm this.

In the charity sector, mergers are not regarded as hostile take overs as can be the case in the commercial world. Charities are not in the business of buying out one another - on a merger of charities, it is very unusual for any money or consideration to change hands, it is more a pooling of resources for the benefit of the charities involved and their beneficiaries.

There are a number of ways to effect a merger. Two examples are for one charity to transfer its assets (and liabilities) to another charity. The transferor charity will then be wound up and removed from the Charity Commission's register. Alternatively, a new charity could be established, with the merging charities transferring their assets and liabilities to this new charity. Both transferor charities would then be wound up and removed from the Charity Commission register. This option is often favoured by merging charities which regard themselves as equals.

All in all, in the right circumstances, a merger is definitely the way forward for a number of charities. If you would like a copy of our Merger Checklist for Charities, please contact Ros Harwood.

**ROLLITS
LAUNCH
CHARITIES
ROADSHOW**

To mark the appointment of Ros Harwood we are launching our Charities Roadshow where we will be offering to visit charities free of charge to talk about one of a range of topics. For further information or to book a visit, please complete the enclosed form and fax it back to us. Alternatively you can contact Ros Harwood on 01904 625790 or by e-mail at rjh@rollits.co.uk

**STOP
PRESS**

The Charity Commission has recently produced two more consultation papers. One on the Promotion of Sport and the other on Charities and Research. Further information can be obtained from their website www.charity-commission.gov.uk.

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INFORMATION

If you have any queries on any aspect of Charity Law please contact:

Ros Harwood on (01904) 625790

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice.

The law is stated as at 1 March 2001

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