

## CHARITY TRUSTEES - ARE YOU LIABLE?

### UNINCORPORATED CHARITIES - BREACH OF TRUST:

The governing document or documents of a charity will set out the terms of the trust and the purposes for which the charity was established. If charity trustees act outside the purposes of the charity or the terms of the trust they will have committed a breach of trust. Trustees will also have committed a breach of trust when they fail to perform their legal duties as trustees.

### WHO IS LIABLE FOR BREACHES OF TRUST?

Charity trustees are only liable for breaches of trust that they have personally committed, connived in or acquiesced to. Therefore, trustees will not be liable for breaches of trust committed by their co-trustees if they had no knowledge of the breach and their co-trustees acted 'on a frolic of their own'.

However, generally in relation to most duties, trustees are under a statutory duty to exercise such skill and care as is reasonable in the circumstances. Therefore, trustees may be held liable for the acts of their co-trustees if they have failed to act in accordance with this duty. Therefore, if trustees have a designated duty to supervise their co-trustees they may be held liable for breaches committed by their co-trustees if they fail to act with reasonable skill and care.

### WHAT ARE THE CONSEQUENCES?

Charity trustees must compensate the charity for any financial loss the charity has suffered as a direct result of any breach for which they are personally liable. Where the breach was committed by a number of charity trustees they will all be held liable.

### WHAT PROTECTION IS AVAILABLE FOR TRUSTEES?

The governing document of the charity or failing that the Charity Commission may authorise charity trustees to take out trustee indemnity insurance. If the trustees do not have the express power to obtain trustee indemnity insurance, the trustees must seek the consent of the Charity Commission to amend the governing document to allow them to take out trustee



indemnity insurance. This is because the payment of premiums for trustee indemnity insurance out of the charity's funds is conferring a benefit upon the charity trustees and authority is needed to use the charity's funds in this way.

The Charity Commission may authorise payments to be made from charity funds to indemnify charity trustees who have incurred personal liability due to acts committed in breach of trust but with honest mistake.

Under no circumstances can trustees be indemnified for acts committed in deliberate or reckless breach of trust.

### CHARITABLE COMPANIES - CONTRACTS

Unlike trustees of unincorporated charitable trusts, trustees of charitable companies are not personally liable to third parties on contracts entered into with third parties on behalf of the charity. This is because the trustees of charitable companies enter into contracts in the name of the company and are not personally parties to the contract.

However, if a trustee commits the charity to a contract that the charity did not have the power to enter into, the trustee could be personally liable to indemnify the charity for any loss it has suffered if the other trustees decide to take action against the trustee. In addition, trustees who bind the charity to a contract without personal authority to do so but who represented to the third party that they had authority may also be personally liable to indemnify the charity for any loss it has suffered, if their fellow trustees decide to take action against them.

### IN SUMMARY

Charity trustees should communicate efficiently and openly and decisions to enter into contracts with third parties should be formally minuted. Charity trustees should also be fully aware of their duties and responsibilities and the responsibility of the administration of the charity should not be left to one or two dominant personalities and appropriate checks should be put in place. Charity trustees should assess the risk to which they are exposed and the cost of the premiums and consider whether trustee indemnity insurance would be in the best interests of the charity. Furthermore, unincorporated charities should consider the benefits of incorporation and the limited liability such status can offer.



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## CASE LAW UPDATE - DISPOSAL OF LAND AND BUILDINGS BY CHARITIES

### **Bayoumi v Women's Total Abstinence Educational Union Ltd (2003)**

This case was heard earlier this year and upheld the rule that charity trustees must observe the statutory pre-sale procedures when disposing of land and buildings owned by the charity.

### **STATUTORY PRE-SALE REQUIREMENTS:**



In order to proceed with the sale and complete the transaction the trustees must obtain and consider a report from an independent qualified surveyor and based on their consideration of the report, decide whether or not the proposed disposal terms are the best that can be reasonably obtained. If the disposal is to a 'connected person' (including a trustee, the immediate relatives of a trustee, an officer or employee of the charity or their spouse) the charity trustees must obtain prior sanction from the Charity Commission.

### **CONSEQUENCES OF NON-COMPLIANCE - BREACH OF TRUST:**

The Bayoumi case illustrated that if the trustees do not comply with the pre-sale requirements, the contract of sale will be void and either party will have the right to pull out before completion. This is because no binding contract will be in place.

The trustees will be liable for breach of trust if the sale completes and they have failed to comply with the pre-sale requirements. The consequences for breach of trust entail that the trustees can be held personally liable to compensate the charity for any loss it has suffered for which they are directly accountable. The Bayoumi case showed that trustees could avoid a breach of trust if they took action to annul the contract before completion but this might discourage third parties from dealing with the trustees in the future.



### **IN SUMMARY**

Charity trustees must observe all the statutory pre-sale requirements before any contract is entered into. If the trustees fail to comply with the statutory pre-sale requirements this will be breach of trust and they may have to compensate the charity for any loss it suffers as a result.



## LEADING CHARITY LAWYER JOINS ROLLITS

Rollits has reinforced its commitment to delivering the best charity legal advice to clients with the senior appointment of one of the region's leading trust lawyers, Caroline Hedges.

Previously with Addleshaw Booth & Co in Leeds, Caroline joined Rollits in January 2003 as a Partner in the Private Capital Department. Bringing with her a wealth of experience in all aspects of charity law and also private client work, Caroline is recognised as an expert in her field. In addition to providing advice to a range of national and local charitable and non profit-making bodies, she advises numerous substantial trusts and wealthy families on all aspects of estate and tax planning. A member of the Charity Law Association, Caroline is also a committee member of the Yorkshire branch of STEP.



**Caroline Hedges**

### **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.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle,

Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

**The law is stated as at 1 July 2003**

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