



L E A D E R S

I N T E R S

T I T L E S

P O I N T S

W I N N I N G S

A C H I E V E M E N T S

R E C O R D S

H I S T O R Y

DIANA PRINCESS OF WALES MEMORIAL FUND – TRUSTEES BEWARE

The high publicity surrounding the recent out of court settlement between the Diana Princess of Wales Memorial Fund and the American memorabilia firm Franklin Mint has highlighted to Charity Trustees the risks of getting involved in litigation. The Diana Princess of Wales Memorial Fund took Franklin Mint to court in 1998 because it was selling a Diana commemorative plate, which the Charity claimed violated its "exclusive rights" to Diana's name and image. Franklin Mint subsequently sued the Charity for malicious prosecution, seeking £14 million in damages.

This case might seem far removed from the situation Trustees of small charities might find themselves in. However, Trustees of all charities (regardless of their charity's size or sphere of operation) should take note of the case because it is a reminder of some of the basic duties of Charity Trustees and the pitfalls of Trustees failing to fulfil these duties.

In light of the case, the Charity Commission has warned charities against embarking on litigation that could threaten the charity's funds. Many charities, such as the Diana Princess of Wales Memorial Fund are anxious to protect their "brand" and reputation, including any motifs, symbols and slogans identifying the charity. However, if the Trustees take expensive legal action without first weighing up what is in the best interests of the charity and balancing this against the possible adverse consequences, they could be deemed negligent.

Trustees who act negligently could be held personally liable and be forced to make good any financial loss suffered by the charity as a result of their negligence. Trustees must act in the best interests of the charity at all times and not embark upon expensive legal action purely to vindicate themselves. Failed legal action could see the charity, and if negligence becomes an issue, possibly the Trustees personally, having to pay not only the charity's legal costs and but also those of the successful party.

This principle does not just apply to taking legal action but extends to all matters concerning running the charity. Trustees of unincorporated charities (i.e. charitable trustees or unincorporated associations) face a greater risk because the Trustees enter into all contracts and leases etc on behalf of the charity because it cannot do so in its own name. As a result, unincorporated charities have unlimited liability. In the event of a problem, the Trustees might be forced to personally account for a failure to meet obligations under any contracts or leases, which they entered into on behalf of the charity. Any individual or organisation with whom a contract or lease has been entered into may also sue the Trustees of unincorporated charities in their own names should anything go wrong.

To some extent, Trustees can protect themselves by taking out Trustee indemnity insurance. However, the governing documents of the charity have to permit this or the consent of the Charity Commission will be needed. Trustees of unincorporated charities should all consider the merits of incorporation. Particularly medium to large charities, where there are several contracts and potential liabilities for which the Trustees may be held personally responsible.

ROLLITS CHARITY GROUP "AT THE TOP OF THE LADDER"

Partner Ros Harwood, who heads the Charity Group at Rollits is one of the country's leading charity lawyers. Ros, who joined Rollits from a top London firm where she was a partner and head of their charity group is recognised as a leading individual and legal expert in legal directories such as "Chambers and Partners", "The Legal 500" and "Legal Experts". A survey of the country's leading law practices has once again acknowledged Rollits as one of the leading charity law firms in the North East of England. The latest edition of Chambers and Partners - a guide to the country's top solicitors and barristers, describes Rollits' Charity Group as being "at the top of the ladder" and it has been praised by clients for advising on all aspects of Charity law with a "sureness of purpose".



Ros Harwood

Chambers and Partners' commentary states: "At the "top of the ladder," this York-based practice continues to make its mark on the charities sector and rises in the table this year. Its team was highly regarded by interviewees for being able to advise on all aspects of the subject with a sureness of purpose that has secured it a phalanx of new notable clients. One such client said: "I was hugely impressed by the dedication of the lawyers and wouldn't dream of going anywhere else now."

Ros Harwood received plaudits from clients for being "able to give insightful and imaginative solutions to problems." Noted for her "brisk efficiency," she advised a national charity on the development of a multimillion pound sustainable housing development project."

The Charity Group recently recruited a new Charity Assistant, Gerry Salmon, who will be assisting Ros.

CHARITY RESERVES

Trustees should balance their duty to preserve the assets of the charity against their duty to use the charities income and resources to fulfil the charity's purposes. Trustees must set and maintain a sensible level of reserves to safeguard the future of the charity but should not fix reserves at such a level as to tie up money that could be used to support the charity's activities.

The Charity Commission recently uncovered that charities are holding billions of pounds in reserve without real justification. Trustees should formulate written policies on reserves and review these regularly to ensure that they are taking a balanced approach.

INFORMATION

If you would like any further information on any of the issues raised by these articles or Charity law and Trustees' duties and responsibilities in general 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 19 November 2004

Rowntree Wharf, Navigation Road, York YO1 9WE
Wilberforce Court, High Street, Hull HU1 1YJ

www.rollits.com