

New Charities Tribunal gets a Step Closer

The Charities Act 2006 introduced the Charities Tribunal, which will be set up to hear appeals against, and reviews of decisions, directions and Orders of the Charity Commission. It will act as a Court of first instance against decisions of the Charity Commission and it is hoped that it will increase the Charity Commission's accountability to the charities it regulates.

The draft Charity Tribunal Rules which will govern the procedures of the Charity Tribunal have now been published. The Ministry of Justice is now undertaking a consultation seeking views about the draft rules. The consultation will end on 7 November.

It is expected that the Rules will be brought into force early next year to coincide with the establishment of Charities Tribunal. The new Charities Act provides that the Charities Tribunal will have the power to hear matters under three different types of procedure:-

Appeals (e.g. against decisions of the Charity Commission)

Reviews (e.g. reviews of decisions of the Charity Commission)

References (the Attorney General will be able to refer questions of charity law to the Charities Tribunal)

The draft Rules set out the procedures for hearing appeals and reviews and making references, including time limits to lodge appeals, procedures at hearings, disclosure of material and the publication of the Charities Tribunal's decisions. The draft Rules also set out the circumstances in which the Charities Tribunal might make a costs order (e.g. against a vexatious appellant, or the Charity Commission if it finds that the Charity Commission has acted irrationally).

The Executive summary to the consultation document states that the Rules "...will ensure that proceedings before the Tribunal are handled as fairly, efficiently and as quickly as possible." Whether that will be the case will be tested next year when the Charities Tribunal is expected to come into

being. We will keep you updated as to developments via our website and legal alert publications.

In principle, the Charities Tribunal is long-awaited; there is currently no independent appeal process for charities against decisions of the Charity Commission, other than a time consuming and costly application to the High Court.

For those who are interested the draft Rules and consultation paper can be accessed on the Ministry of Justice's website: www.justice.gov.uk. Respondents are asked to respond to a questionnaire and to provide their details. As above, the deadline for responses is the 7 November 2007.



Companies Act 2006 – Heads up for Charitable Companies

Charitable companies and their trading subsidiaries must get to grips with the provisions of the new Companies Act, which has the dubious honour of being the largest Act ever passed in England and Wales.

Certain provisions are already in force governing electronic communications with Members and new provisions come into force from 1 October 2007, which relate the convening of general meetings and passing of resolutions. We have prepared a

Companies Act fact sheet, which details the main changes and when these are due to come into force. If you are a trustee of a charitable company and have not already received a copy, please contact Gerry Morrison.

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Conflicts of Interest – Refresher

One of the basic principles, which most charity trustees will be well aware of, is that a charity trustee must not allow his or her personal interests, preferences or prejudices to conflict with those of the charity. Charity trustees have a duty to avoid getting themselves in a situation where their duty to the charity and their personal interests come into conflict.

The Charity Commission expects all conflicts of interest to be actively managed:-

- Trustees must declare any conflicts of interest at the outset of the trustee meeting and not participate or vote on any matter in which they have a personal interest or conflict of interest.

Charity trustees must take particular care with the following situations in which they could be deemed to have an "indirect" personal interest:-

- Contracts the charity proposes to enter into with connected parties such as spouse, child or business partner of a trustee.
- Contracts the charity proposes to enter into with a company/business in which they, or a party closely

connected to them (e.g. their spouse, child, brother sister, parent etc have a stake/interest)

All charities should have a "Conflicts of Interest" policy in place, which sets out the procedures all trustees must follow when they have identified a potential conflict of interest. This can be revised and updated as appropriate and can be a suitable point of reference for when this problem occurs. If all charity trustees are clear as to the procedures to be followed and the types of situations in which conflicts of interest can arise, it can avoid problems with the Charity Commission or co-trustees at a later date if the correct procedures are not followed. If in doubt, advice should be obtained.

Rollits Charities' Roundtable at Middlethorpe Hall, York

Earlier in the year, we held a charities' roundtable event at Middlethorpe Hall in York. Guest speakers included Ian Green, of Green Communications and Jean Hunter of Development Partners who spoke about how charities might improve their fundraising efforts and raise their profiles to generate greater awareness and support.

Members of the Charities Group, Ralph Coyle and Gerry Morrison also spoke about commercial participators and professional fundraisers' agreements and the law relating to charities and fundraising. Participants from a wide range of charities were able to swap ideas and experiences in the discussion time afterwards. We will be holding similar events in 2008. If you would be interested in attending such an event, or have any suggestions as to topics or issues you would be interested in, please contact Ralph Coyle or Gerry Morrison on 01904 625790.



Royal Appointment

Partner, Ralph Coyle has long been associated with Scarborough Museums Trust and has been guiding the Trust through the redevelopment of the Rotunda in Scarborough. Scarborough Museums Trust will shortly take over the museums and gallery services from Scarborough Borough Council. The Rotunda is being re-developed as a major new tourist attraction in Scarborough and as an educational centre for geology. Prince Charles visited the Rotunda and the trustees on 14 September 2007.

Forthcoming November 2007 Charities' Seminars

Rollits' Charities Group is holding two seminars at Rollits' Hull office (28 November 2007) and Rollits' York office (29 November 2007) which will cover the following:-

Commercial and Employment Law Update for charities

Ralph Coyle, Partner, Commercial Group and Charities' Group, Neil Maidment, Partner, Employment

Charity law update (including Charities Act 2006)

Gerry Morrison, Senior Solicitor, Charities' Group

Public relations for charities

Ian Green, Green Communications

Further details will be confirmed nearer the time, but please reserve the date in your diary. The seminars are free and are open to all interested representatives from charities.

INFORMATION

If you have any queries on any issues raised in this bulletin, or any charity matters in general please contact:

Gerry Morrison or Ralph Coyle 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 4 September 2007

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