

Charities Focus



Don't be relieved of your relief

In tough economic times, many landlords of commercial premises will confirm that finding a new tenant for commercial premises is not easy. In addition to lost rental income, landlords risk incurring mounting business rates bills if the premises remain unoccupied for more than three months.

Given that charities can claim a minimum of 80% business rates relief on commercial property it is hardly surprising that charities and landlords are agreeing deals with each other. A landlord may be prepared to offer the premises at a lower rent in return for knowing that their premises are occupied and that they don't have to pay rates.

This is evidenced by the increase in the number of charity shops occupying high streets (indeed Mary Portas recently called for a cap on the number of charity shops claiming rates relief). Decreases in disposable incomes are tempting more shoppers into charity shops and in many cases the revenues generated by charity shops offer a useful means for a charity to supplement the revenue received from donations.

According to The Charity Commission, they have been contacted by a number of local authorities who are concerned that a number of commercial properties which are let to charities are/appear to be empty. The Charity Commission have expressed their concern that charities may find themselves in what local authorities might consider to be business rates avoidance by landlords.

The Charity Commission have suggested a number of common sense steps which charity trustees should take to protect their position. These include:

- being assured that the tenancy is for the exclusive benefit of the charity, will further the charity's purposes and is in the charity's best interests;
- making sure that the property is fit for purpose and is genuinely required;
- safeguarding the charity's independence and ensuring the charity is not being abused for the benefit of a commercial company;
- taking appropriate professional advice before signing a tenancy; and
- considering the potential liability of the charity to pay outstanding rates if the local authority disputes occupation.

The Charity Commission's detailed article is available on their website www.charity-commission.gov.uk/our_regulatory_activity/compliance_reports/alerts/risk_rates.aspx

In addition we would also stress the importance of keeping written records to demonstrate that you have followed

the above steps so that these can be referred to should a local authority ever challenge whether a tenancy is legitimate or an attempt by the landlord to avoid business rates liability.

Charity trustees should also minimise the risk of being locked into a tenancy of commercial premises which they are unable to occupy. Charities may find that they are able to agree far more flexible terms with their landlords for their tenancies (e.g. regular rights to break a lease if the charity no longer requires the premises) than they could in better economic times.

Alison Munro

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Review of the Charities Act 2006

In November 2011 Lord Hodgson was appointed to review the Charities Act 2006.



Invitations for evidence have been issued inviting charities to put forward their views (professional advisers, umbrella bodies and other parties interested in charity law are also invited to send Lord Hodgson views) on the following matters:

- exempt charities
- land disposals
- organisational forms
- the Charity Commission (charity merger, re-structuring and winding-up)
- the legal definition of charity
- charities and social investment
- trustees

Views are invited until Monday 16 April 2012.

Further calls for evidence on other matters will be issued in stages on further subjects in relation to Charities Act 2006.

Information about the Charities Act Review, calls for evidence and how to submit views is available on the Cabinet Office's website www.cabinetoffice.gov.uk.

It will be interesting to see if the views provided and evidence submitted will result in any proposed amendments to charity legislation. Any charities with strong views should seriously consider responding to the consultation. We will be submitting our views as professional advisers.

Gerry Morrison

The Charity Commission for Northern Ireland – registration of Northern Ireland charities

It is hoped that the Charity Commission for Northern Ireland will soon be able to begin registering Northern Ireland charities following a proposed amendment to the Northern Ireland charity legislation.

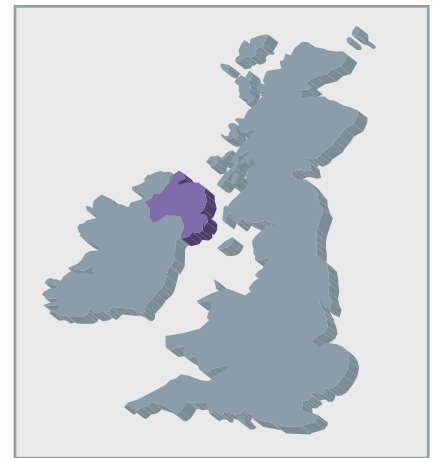
This has been on hold since June 2010 when problems with the draft legislation were first brought to the Department for Social Development's attention in Northern Ireland.

The delay was with regard to the legislation governing the public benefit requirement. When the amended legislation is passed by the Northern Ireland Assembly (expected late summer 2012) the Charity Commission for Northern Ireland will publish some public benefit guidance and will embark upon a pilot registration phase.

Charities which carry out cross-border activities and that are currently registered with the Charity Commission for England and Wales and/or the Office of the Scottish Charity Regulator should keep an eye upon what is happening but do not need to do anything yet. The pilot registration phase will first need to be completed following the enactment of the legislation by the Northern Ireland Assembly. However, cross-border charities

should keep up-to-date with what is happening and it is expected that the Charity Commission for Northern Ireland will publish further information about when cross-border charities can and will be required to register in due course.

Gerry Morrison



Charity Tribunal verdict, poverty charities and restricted groups

Last year, the Attorney General Dominic Grieve, submitted a reference to the Charity Tribunal with regard to whether poverty relief charities that define their beneficiaries in relation to their relationship to another person, company or organisation are charitable at law.

This was in response to a request by the Charity Commission for the Attorney General to make the reference because it felt that the law was not clear following the introduction of the Charities Act 2006.

The Charity Tribunal has now ruled that poverty relief charities which define their beneficiaries by their relationship to another person, company or organisation can still meet the public

benefit requirements set out in the Charities Act 2006.

The Charity Tribunal considered the legal meaning of the term "public benefit" and in the case of charities for the relief of poverty emphasised that public benefit with regard to whether a charity's actions were of benefit to the community were paramount as opposed to it coming down to a question of numbers who benefit.

The Charity Commission, which did not express a view with regard to the above, but wanted clarity on how the law and public benefit applied has expressed that the clarify from the Charity Tribunal is welcome and confirms that the law has not changed with regard to these types of charities. There has been some criticism of the Charity Commission for asking the Attorney General to refer this matter to the Charity Tribunal in the first place.

Gerry Morrison



Ownership of copyright – an overview

Third parties such as design agencies, photographers and consultants are often commissioned to create materials for a client. These materials will often be copyright works. This article is an overview on ownership of copyright in materials created by third parties.

The Fundamentals of copyright

Copyright is intended to protect the results and expressions of creative activity. Unlike some other intellectual property rights such as registered trademarks and patents, copyright cannot be registered in the United Kingdom and arises automatically when the work is created.

There are two different categories of copyright. The first are classic copyrights, which apply to original literary, dramatic, musical and artistic works. The second, sometimes referred to as entrepreneurial copyrights, include films, sound recordings, published editions and broadcasts. Although both categories seek to protect creative expression, there are differences between (and within) the categories in respect of the length and ownership of copyright protection and what constitutes infringement. This article focuses specifically on 'classic' copyright.

For 'classic' copyright to exist, the work must be original in expression and form (i.e. not copied). It is important to note however that the idea behind the work does not have to be original – copyright protects the expressions of ideas not the ideas themselves. There must also have been a 'minimum effort' spent on the work, although the amount of effort required depends on the category of work. To be protected by copyright, work must be recorded in tangible form, for example on paper or electronically.

Copyright can only be transferred by a written agreement signed by or on behalf of the copyright owner.

Ownership of 'classic copyright'

Copyright is generally first owned by the author of the copyright work. As there is no registration system it is advisable to include a clear statement of ownership whenever a copyright work is reproduced, for example, Copyright or ©: Rollits LLP 2012. In this instance Rollits LLP is the owner of the copyright work and 2012 denotes the date that the work was created.

Employees

An exception to the author being the first owner of copyright is where the copyright work is created by an employee in the course of his or her employment. The copyright will be owned by the employer unless there is an agreement to the contrary. It is usual to confirm ownership of copyright in an employee's contract of



employment by providing that copyright in any work created by an employee in the course of his or her employment is owned by the employer.

Commissioned work

Particular care needs to be taken where copyright works are commissioned from a third party. Copyright in commissioned works will belong to the person commissioned to create the copyright work unless the parties have entered into a written agreement that provides for the copyright to belong to the commissioning party. In the absence of such an agreement, the commissioning party will only have a licence to use the copyright work for the purpose that was in the contemplation of both parties at the time that the copyright work was commissioned. Use of the copyright work for another purpose could be outside the terms of the licence and infringe the author's copyright.

Therefore, when commissioning copyright works it is advisable to deal with ownership and to enter into a written agreement transferring ownership of the copyright to the commissioning party or,

where this is not possible, granting to the commissioning party a licence to use the copyright work for all purposes required by the commissioning party.

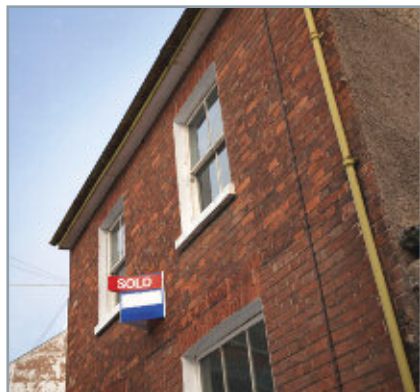
Moral rights

In addition to copyright, moral rights can exist in literary, dramatic, musical and artistic works. The most common moral rights are the right to be identified as the author (the right of paternity) and the right to object to derogatory treatment of work (right of integrity). Moral rights cannot be assigned but can be asserted or waived by the author.

When commissioning copyright works it is advisable to consider whether the author should waive his/her moral rights. This is particularly important where the commissioning party does not wish the work to be identified with the author or may wish to make substantial changes to the work. Where this is not possible the commissioning party and the author should agree the extent to which the author may assert his or her moral rights in any use of the works.

James Peel

Power to the people



This is a quick reminder that the Localism Bill received Royal Assent in November 2011, creating the Localism Act 2011. This statute covers a broad range of matters including community rights, planning, housing, general powers of competence and empowering cities and other areas. Its aim is to give communities and local government greater powers and freedom from Whitehall.

Some parts of the Localism Act 2011 are already in force. It's predicted that other parts will be brought into force in April 2012.

From a charity's point of view, one of the most relevant parts of the Localism Act 2011 will be the part dealing with the rights of local community groups to request that properties are placed on the List of Community Assets. Whilst a property is on the List, the property owner will be unable to dispose of the property unless local community groups are first given the opportunity to bid for the property. Local community groups need to realise that this legislation simply gives them an opportunity to bid for the property – it doesn't obligate the property owner to sell to them.

Also, if your charity owns property, do you have adequate procedures in place to check for notices left at the property/are your contact details up to date if someone is serving a notice on you? If a local community group attempts to put your property on the List of Community Assets, you will want to give yourselves as much time as possible to respond. You have a window until April 2012 to check that your procedures for checking for notices are adequate and your contact details are up to date.

Alison Munro

Potty pensions – charities beware

A recent High Court ruling has determined that the Wedgwood Museum's historic collection of pottery and other items of cultural significance was an asset of the business, rather than being held on any special charitable trusts, and therefore could be sold off to fund a debt that the Museum had inherited from the deficit in the Wedgwood Group Pension Plan, in which it participated.

The Museum, with its 5 pension scheme members (in a group scheme including some 7,000 members), became responsible for the entire deficit in the pension scheme as it was the last remaining employer in the scheme, after all the other participating employers had become insolvent. It was the "last man standing" and under the Rules of the scheme therefore inherited the full deficit, as prescribed by current pensions legislation (ie s. 75 of the Pensions Act 1995).

Despite protests from charities who could find themselves in a similar position (many schemes which charities have joined, including those provided by the Pensions Trust, are "last man standing schemes" – and so could face picking up the debts of other employers with which they have absolutely no connection), the government has indicated, in answer to a Parliamentary Question about this case, that despite recent government consultation about the debt on employer legislation, there would be no exemption made for charities from these aspects of the legislation.



Charities should be aware of the real risk to their assets from the application of scheme rules and legislation to schemes in which they participate that are in deficit.

Craig Engleman

Charities should prepare for auto-enrolment

A recent survey by one of the biggest providers of occupational pension schemes for the charitable sector, The Pensions Trust, has indicated that only a small minority of voluntary sector organisations and social enterprises are fully aware of their responsibilities in respect of auto-enrolment.

All employers will need to enrol their workers into a pension scheme, with the largest employers required to do so from October 2012. Smaller employers will be staged in at later dates, with the smallest employers required to enrol employees by April 2017.

Although for the smaller organisations this date is some way away, all organisations should be preparing themselves and seeking help in getting ready for this new regime.

Craig Engleman

Information

If you have any queries on any issues raised in this newsletter, or any charity matters in general please contact Gerry Morrison on 01904 625790 or email gerry.morrison@rollits.com.

This newsletter 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 Newsletter useful. If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 26 March 2012.

Hull Office
Wilberforce Court, High Street,
Hull HU1 1YJ
Tel +44 (0)1482 323239

York Office
Rowntree Wharf, Navigation Road,
York YO1 9WE
Tel +44 (0)1904 625790

www.rollits.com

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