



Charity Law Bulletin Issue 20

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Microsoft expands its charity software donation programme

Microsoft has expanded its software donations programme, which began in 2006, by widening the type of charities which can apply (to also include medical research organisations, private foundations and amateur and sports recreational organisations) and also increasing the number of free products which charities can receive. Charities are now able to order up to 50 copies of 10, instead of 6, different Microsoft products, such as Windows 7 and Office 2010, in a 2 year period. Charities may put in requests as often as they like using the Charity Exchange Service and will be charged a small administrative fee (of only a few pounds) for each request.



Grants and loans of £12 million available to social enterprises

A new £12 million capital growth fund, The Social Enterprise Investment Fund (SEIF), is currently offering grants of between £50,000 and £150,000 to social enterprises providing health or social care services in England.

Loans are also available if the organisation can show it is able to repay it. The grants are available for property or land purchases, property renovations and refurbishments, vehicle purchases, equipment for delivery of services, IT equipment and professional fees relating to capital projects. To apply, organisations must have existed for more than 12 months and must be able to spend the funding by 31 March 2012.

The deadline for applications is noon on Friday 16 September. If you would like to apply, the application form is at <http://www.thesocialinvestmentbusiness.org/our-funds/seif/seifcapitalgrowthfund/>.

Abolition of cheques cancelled

The Payments Council has announced that it has cancelled its target of abolishing cheques by 2018 and said that cheques will continue for as long as customers need them.

Catholic Care given leave to appeal again

The social care charity Catholic Care has appealed for the fourth time against a ruling of the charity tribunal that it cannot change its objects to say that it provides adoption services to heterosexual couples only, with the aim of excluding gay couples from using its services. The Upper Tribunal, which has the same status as the High Court, has allowed the appeal which should be heard later this year. Catholic Care will be arguing that the charity tribunal had failed to properly perform the balancing act to determine whether discrimination was reasonable given that, according to the charity, the alternative was closing its adoption service because without discriminating, it would lose its funding from the Catholic Church.

CIO Update request is refused

The Charities Act 2006 introduced a new legal form for a charity which is an incorporated form of charity but which is not a company, called the Charitable Incorporated Organisation (CIO). CIOs will be regulated by the Charity Commission alone and not by Companies House and so will avoid dual regulation. According to Nick Hurd, the minister for Civil Society, this new structure will be brought in this year. It is already available in Scotland.

A recent report by Deloitte LLP has stated that the main advantage of CIOs is the simplification of filing and reporting, whether it is in relation to changes in structure or annual filing requirements.

However, the report also highlights the following disadvantages of CIOs:

- The law surrounding CIOs has yet to evolve, and unless Parliament enacts new legislation, the Companies Act 2006 will still apply.
- Larger charities will not benefit from the new structure as they will have no way of offering security over its assets for any borrowing. Therefore, the idea of operating as an incorporated entity is meaningless as in order to secure any borrowing individual trustees may have to give personal guarantees. As a result, the Charity Commission has conceded that larger charities will still operate using the limited company structure rather than the CIO.
- At this stage CIOs will not be available to charities converting from unincorporated trusts, but will only be available for new charity formations.

The Government is yet to finalise the regulations which will apply to CIOs but it is looking increasingly likely that this new structure will be coming into force sooner rather than later.

Facilitation payments may constitute bribery under the Bribery Act 2010

Under the Bribery Act 2010 (the 'Act') which came in to force in July 2011 charities may face prosecution if they are found to be using charity funds under



Section 6 (bribery of a foreign official) and Section 7 (failure of a commercial organisation to prevent bribery) of the Act.

In view of the widespread operation of many charities working in foreign countries, and due to the nature of some foreign countries and the fact that in some cultures, the act of bribery is so deeply embedded, the Charity Commission (the 'Commission') fears that charity officials may find it hard to go against long established traditions. The Commission has stated that "trustees should avoid any situation where there is an expectation of a gift or a payment".

In particular, when looking at so called facilitation payments, charities working overseas may occasionally speed up services in areas where there is a severe charitable need by making payments to other officials. Under the Act, this use of charitable funds is unacceptable and could lead to prosecution under the Act, which would inevitably result in bad publicity for the charity, leading to the loss of donations and funding.

It is clear that, charities must stand firm against any form of bribery and present a no tolerance stance.

Commission Removes 'Sham' Charities From The Register

The Charity Commission has recently removed seven charities from the register, and has taken the decision not to register a further 28 applications for registration.

The Charities that have been removed were all formed with the aim of 'the advancement of the Christian faith'. They were all registered in July and August last year, and removed from the register in March this year after the Commission's investigation had been concluded.

The Commission became suspicious after it discovered that the address for correspondence with one of those charities (and it was also the address of one of the trustees) was unoccupied. Further investigations showed that a total of 35 applications for registration had been made by organisations all over the country, but that they all shared common features, such as addresses that were unoccupied, or did not exist, telephone numbers which did not work, and the inclusion of the same financial information in different registration applications

The Commission reported to the police its suspicions that some of the information provided was false.

When any application for registration is made, the Commission has to consider the possibility that the charity may be a sham, and it has a duty to remove from the register any body that it considers is no longer a charity, or any charity that has ceased to operate or to exist. Any application is assessed against a legal framework to ensure that the objects for the organisation are exclusively charitable, and that the organisation will provide a public benefit.

The Use of Trading Companies by Charities

As funding from central and local government is being cut, and as legacies and donations to charities decline, many charities are looking for the first time at how to raise additional funds. This is a matter which needs to be addressed carefully by charities, to ensure that they do not fall foul of charity law.

Often the idea will be that the additional funds are raised by carrying on activities that do not fall within the primary purposes of the charity. Trading by a charity is only permissible if it is either in pursuance of its objects, or is temporary or incidental to those objects. A charity therefore must ask itself whether the trading activity will directly further one of the charity's objects. If it does so, then the activity will be 'primary purpose trading', and can be carried on by the charity. Examples of trading that will fall within the definition of primary purpose would be: an independent school charging fees for the provision of education; an art gallery charging for admission; selling goods made by beneficiaries of the charity.

If the activity is not primary purpose trading, then it may be appropriate for the charity to form a subsidiary trading company to carry out the activities. Usually the company will be a company limited by shares, and the charity itself will own the shares.

Although a company such as this, which is not a charity, will, on the face of it, be liable to pay corporation tax on the profits that it generates, this can be avoided if the trading company donates all of its profit to the parent charity using the gift aid scheme. In these circumstances the profits made from the trading can be



received by the charity without corporation tax being paid on them.

When a trading subsidiary is set up by a charity it should ensure that the following points are addressed:

- The articles of association of the trading subsidiary should be drafted to ensure that the charity retains some element of control over the subsidiary.
- The board of directors of the subsidiary should not be the same as the board of the charity, and thought should be given as to the composition of it.
- The charity cannot simply use its own funds to subsidise the trading subsidiary (because it won't be using its funds for its charitable purposes). The most common way for the subsidiary to be provided with working capital is for the charity to provide the subsidiary with a loan (usually secured over the assets of the subsidiary).
- The governance of the trading subsidiary, and in particular, dealing with conflicts of interest for those members of the subsidiary's board who are also trustees of the charity.
- If the charity is to provide some services or support to the subsidiary, it should ensure that these are charged for properly, and that the arrangements are recorded in an agreement between the two bodies.

Whilst the use of trading subsidiaries is a common and effective way for a charity to raise funds, it is something that should be approached with care to ensure that neither the charity nor the subsidiary falls into any of the traps that exist.

Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this bulletin. In the case of specific problems we recommend that professional advice be sought.

Contact us

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