

SocialEconomy

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voluntary organisations and social enterprises

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Charities...

The Budget 2010 – Charity giving across Europe



Some of you may have been following the *Persche* line of cases, about whether national tax reliefs should be applicable to cross-border donations within the EU.

In the 2010 Budget, the Government has confounded the cynics and agreed to widen UK charity tax reliefs, to comply with the European case-law. This means that donations made by UK resident or domiciled donors to charities in other Member States and in the European Economic Area (including Norway and

Iceland) will now, in some cases, be eligible for tax reliefs such as Gift Aid or relief from capital gains tax or inheritance tax. The extension of UK charity tax reliefs will also apply to the equivalent of Community Amateur Sports Clubs within these European countries. In time UK charities will also benefit from donations by nationals of other European countries.

This new tax treatment will apply to a charity or other organisation which meets eligibility criteria for UK charity tax reliefs and exemptions. To implement

the extension, the definition of “charity” will be standardised across all UK charitable tax reliefs and exemptions. Controversially, it includes a new management test, where the organisation must prove that it has ‘fit and proper persons to be managers of the organisation’. HMRC’s draft guidance says that it does not necessarily follow that individuals who are considered by a charity regulator to be suitable to act as trustees of charities will be considered to be fit and proper persons for the purposes of the management condition. This

does nothing for creating certainty in the sector.

Factors that may lead to HMRC deciding that a manager is not a fit and proper person include matters such as a history of tax fraud or other fraudulent behaviour including misrepresentation and/or identity theft (which seems fair), but it also includes what HMRC describes as its “knowledge of involvement in attacks against or abuse of tax repayment systems”. Could this include those who have opted for more aggressive forms of tax planning?

Charities...(continued)



Should charities operate in an environmentally friendly way?

For those who have been wondering how far their charity should try to be environmentally friendly if it is not one of its charitable objects, the Charity Commission has created a new charity page to try to help answer that question.

The Commission is trying to encourage charities to be aware of their wider responsibilities to society and the communities in which they work. Improving the environmental impact of their premises and the way they work may be an important part of this.

The Commission's view is that it is reasonable for trustees to spend money on being more environmentally friendly where they have balanced the additional cost of environmental measures

against other factors such as benefits to their reputation and donor confidence. As long as trustees have considered the risks of each option and reached a rational decision, they are unlikely to be criticised – by the Commission at least.

The Commission has updated the guidance *'Hallmarks of an Effective Charity'*, and the 'Essential Trustee' to reflect this new approach. One does wonder, however, whether HM Revenue and Customs will share this view if charities whose objects are not linked to environmental causes incur major environment-related expenditure. Might it be treated as non-charitable expenditure for tax purposes? Please refer to: http://www.charitycommission.gov.uk/RSS/News/pr_enviro.aspx

Governance and data protection

The Charity Commission opened a statutory inquiry into the National Bullying Helpline, in response to over 160 complaints made to the Commission early this month after the "Browgate" bullying claims. Concerns had been raised about the protection of confidential information held by the charity as a result of the operation of the charity's confidential helpline for victims of bullying.

The Commission's inquiry relates to the proper discharge of the duties and responsibilities of the trustees of the charity and not directly to issues relating to the possible breach of data protection and privacy law (which is a matter for the Information Commissioner's

Office), but in some ways the two are slightly interlinked. Trustees must ensure that confidential information remains confidential. Please see: http://www.charitycommission.gov.uk/RSS/News/pr_national_bullying.aspx



New guidance for trustees with learning disabilities

In considering diversity of trustees do you consider trustees with learning difficulties?

The Charity Commission has recently published a guide for trustees of charities who have learning disabilities, to assist them in understanding their role. It is very user friendly and can be found at http://www.charitycommission.gov.uk/RSS/News/pr_cc3_easy.aspx



Accounting for heritage assets – new rules and guidance

New accounting disclosures will apply to charities holding heritage assets for accounting periods beginning on or after 1 April 2010. Accounts will require information about the nature and scale of heritage assets held and policies for their acquisition, preservation, management and

disposal. Information about public access to heritage assets held is also required.

For those who have been grappling with the new accounting standard 'Financial Reporting Standard 30: Heritage Assets' published by the Accounting Standards, you may

wish to read the Commission's new SORP information sheet:

www.charity-commission.gov.uk/charity_requirements_guidance/accounting_and_reporting/preparing_charity_accounts/infosheet3.aspx

Legacy income Part 1 – *RSPCA v Sharp and Mason*



Much has been said in the press recently about the pitfalls of leaving money to charities, in the wake of the two RSPCA cases, but what actually happened? We shall look at the two cases over this issue and the next issue of *Social Economy*.

Only two weeks after the court ordered the RSPCA to pay most of £1.3 million in legal fees in the *Gill* case, to be reviewed in the next edition, the charity received judgement in an action to challenge the distribution of George Mason's estate. Mr

Mason's Will left gifts to his brother, two friends and the RSPCA. His estate was distributed in accordance with his Will, with the inheritance tax being paid from the residuary estate which was left to the charity. The RSPCA was given £370,153 in a residuary legacy.

The charity was not happy with the interpretation of the Will taken by the executors. The RSPCA believed that they were entitled to £651,820. This would have resulted in significantly smaller sums being given to the deceased's brother and two friends.

In saying that "this action has plainly caused distress to the Defendants and in my view ought not to have been brought, the judge held that the Will had been interpreted correctly and the RSPCA were heavily criticised for bringing this action. The money

received by the charity was described as a "generous and ample provision out of his [Mr Mason's] estate".

Interestingly, the judge, commenting on the fact that trustees of charities have a duty to maximise the charity's assets, questioned whether the discharge of that duty required the *Sharp and Mason* action to be brought. What is clear is that for a charity to bring a case before a court, they must be on a clear legal footing. Whilst it is hard to see how the RSPCA could not have contemplated a challenge in the *Gill* case, where the Will clearly left the entire residue to the charity, on the *Sharp and Mason* case this is less clear. In any case, charities are strongly recommended to consider mediation in case of a dispute.

Environment...

Revolution for Community Renewables

The Government launched its new Electricity Feed-in Tariff Scheme on 1 April 2010. This new renewable energy support programme pays any electricity generator a tariff for electricity generated. The scheme is one operated very successfully in Europe for many years which has led to the growth of domestic renewable energy

schemes and small scale renewables for farmers and communities. Ofgem has more information regarding the new Feed-in Tariff Scheme at www.ofgem.gov.uk/fits. It creates an enormous opportunity for small scale renewable enterprises.

Two community organisations were quick to make use of this. At the

end of March Community Interest Company h2oPE and co-op group Energy4All both announced share offers for community energy production schemes. Both organisations develop renewable energy projects to supply local communities. Share offers are available from h2oPE relating to community hydro schemes in Stockport and

Bainbridge North Yorkshire until 9 June 2010, or until £1 million is raised. The Energy4All share offer closes on 26 May 2010, again with the aim to raise £1 million but for developing community wind projects. For further information or to request a prospectus, visit h2oPE at www.h2ope.org.uk or Energy4All at www.energy4all.co.uk

Local Authorities and Data Protection Issues...

Local Authority Contracts: Disclosure of Information



A recent case has provided a reminder of the ability of members of the public to access local authority information. Rather worryingly, this extends to the public's ability to obtain information regarding the operation of companies and businesses contracting with local authorities.

It is well known, particularly after the MP's expenses scandal, that the Freedom of Information Act 2000 plays a key role in permitting access to information held by public authorities. Perhaps less well known is the Environmental

Information Regulations 2004 that can be used to obtain disclosure of environmental information held by public authorities. There are exceptions to this, for example, where disclosure should not be allowed in order to protect a legitimate economic interest. This should protect the confidentiality of commercial or industrial information.

Where local authorities are concerned, information disclosure can operate under section 15 of the Audit Commission Act 1998. The gist of this section is that 'any person interested' (so including

council tax payers) may inspect a local authority's accounts and documents 'relating to' those accounts. The question of what was meant by documents 'relating to' the local authority's accounts was addressed in the case of *Veolia ES Nottinghamshire Ltd v Nottinghamshire CC & Others [2009]*.

This recent case involved a waste management company that had contracted with Nottinghamshire County Council. As one would expect, payments to the waste management company, from the Council, were recorded in the

Council's annual accounts. A local elector requested that documents relating to the transactions be disclosed. The company said that these were confidential commercial documents, which could provide information valuable to competitors if they entered the public domain, but the court rejected this argument and held that the documents were supporting records to the accounts and so should be disclosed. This case highlights one of the risks involved in contracting with local authorities and this should be borne in mind when considering whether to bid for these type of contracts.

Employment...

Work to stay healthy

6 April 2010 saw a change to the current system of issuing medical certificates to sick employees.

Evidence shows that work is generally good for workers' health, whilst staying off work can lead to physical and mental health issues which may extend beyond the original illness. The new 'fit notes' will replace the old 'sick notes' and GPs will be able to, where appropriate, suggest types of adjustment or adaptations an employer could consider making

to help their employee back to work earlier (for example, reduced hours, light duties or even a return to a type of work that may not be the employee's original job). In contrast, a sick note simply stated whether an employee should or should not work. The impact of the new fit notes are likely to be limited since GPs are not obliged to suggest changes and there remain concerns over the extent of GPs' knowledge of occupational health or of any particular workplace in order to make meaningful suggestions.



How to use an external decision-maker



Social Economy speaks to barrister Naomi Cunningham following her appointment by a small charity as an external decision-maker in an employee's dismissal appeal.

Staff disciplinarys and grievances must be managed by someone who is not conflicted with the issue, but with the seniority to make a binding decision on, for example, overturning another manager's decision. Ideally, this would involve a separate manager for each of the investigation, hearing and appeal stages. However, for small organisations or where the employee is very senior, the only manager with sufficient seniority to make a decision may already have been involved in the case.

In Naomi Cunningham's case, the charity instructing her was tiny

and the trustees had already been involved in the decision to dismiss the employee. The appeal had all the hallmarks of an employment tribunal claim in the making and the charity wanted to reduce that risk. Many small employers experience this scenario at some point so an option is to appoint an external decision-maker to avoid the conflict.

When?

Appropriate cases mainly arise following dismissals, although some grievances will also be serious enough.

The employer pays so is there bias?

The decision-maker is not a 'hired gun'; they make independent decisions and must have the power to reverse the initial decision if they deem appropriate. The worst

possible course of an employer is to try to fix the result in advance, or refuse to accept the decision-maker's decision. Another advantage of a decision-maker is to overcome any internal politics affecting the case.

How much will it cost?

A decision-maker is pointless unless they will make proceedings less likely, or easier to settle or defend. The fee could turn out to be modest in comparison with the cost of litigation and may pay for itself if it heads off litigation or aids settlement. If a claim is brought, you will need to factor in the cost of a witness statement and tribunal attendance for the decision-maker.

Who?

Possibilities include employment lawyers, experienced HR professionals and senior trade

unionists. Independence and experience are key. There is no obligation to consult employees on the choice of decision-maker, but it is sensible to accommodate employees' views if possible.

How should you handle the relationship?

Carefully define the decision-maker's role, their powers and, although it may sound obvious, abide by the decision made.

Naomi Cunningham is a barrister at Outer Temple Chambers, London. Ms Cunningham reports further on her experience as an external decision-maker in the *Employment Lawyers Association Briefing* publication.

April 2010 employment law changes

In recent years the Government has followed a policy of restricting the commencement of new employment laws to either April or October.

For reasons thought to be connected to the global recession, the flow of new law has only trickled in recent times, but this quarter, *Social Economy* can report several significant changes to employee rights. Further new rights for employees include :

- a new right to make a request in relation to study or training (including time off to do this);

- a new right for new fathers to take up to 26 weeks' additional paternity leave where their partner returns to work early from maternity leave;
- a rise in the standard rates of statutory maternity pay, statutory paternity pay and statutory adoption pay from £123.06 to £124.88 per week; and
- an increase in the minimum pension age from 50 to 55 for many employees.

For further details on any of these employment law changes, please contact Philip Williams on **0113 244 6100** or philip.williams@wrigleys.co.uk

Social Enterprise...

To be (a charity) or not to be?

If you have decided to set up an organisation which is deliberately not to be a charity, it is important to ensure that your organisation is very clearly not charitable from the outset, particularly if you go on to undertake high profile fund-raising for the cause. The Commission's Viva Palestine Inquiry Report sets out a number of interesting lessons on this point (and is a rather interesting read if you have a spare half hour).

If your organisation is charitable in law, you must register with the Commission and comply with the constraints of charity law. It is the 'price' of the beneficial tax

treatment given to charities and is intended to help protect the public against rogues.

So what does charitable in law mean? Technically, it should mean it must have an exclusively charitable purpose, which falls under one of the established heads of charity. It must be for the public benefit. It must not be undertaking essentially non-charitable activities such as political activism. One could be forgiven for thinking that the practical meaning is whatever suits the Charity Commission.

For anyone who has tried to register a charity in the past few years and been told it could not

be registered because its 'main' purpose (regardless of how 'charitably' the constitution had been drafted) was in fact other than charitable (too political perhaps?), the Commission's stance in this case will seem a little contradictory. Viva Palestine was established with the aim of relieving the suffering of people in the Gaza region of Palestine. Evidence given by the founders was that it was specifically intended to be political as well, that it undertook campaigning and therefore could not be charitable.

The Commission took the view that the original constitution itself was

charitable in law and therefore the organisation had an obligation to register and then had to comply with charity law (and therefore stop campaigning). This means that it is very important to ensure that if you are not intending to set up a charity, but simply a not-for-profit organisation, you make absolutely sure from the outset that your constitution is not capable of being interpreted as charitable by the Commission. Please see:

http://www.charitycommission.gov.uk/RSS/News/pr_viva.aspx

The employee ownership effect



It is estimated by the Employee Ownership Association that the employee ownership sector is now worth £25 billion in combined annual turnover to the UK economy. Employee owned businesses may be owned either in whole or in part by its employees, but the common thread is that all are controlled by their employees. Examples of such businesses include household names such as the John Lewis Partnership and Loch Fyne Oysters to

smaller businesses including social enterprises. Wrigleys Solicitors LLP advises a number of employee owned businesses having taken many of them through the succession route from being privately or publicly owned to employee ownership using several different structures.

The Employee Ownership Association have recently published *The employee ownership effect: a review of the evidence*, a report of a rigorous

study into how companies with significant employee ownership perform. The report provides interesting views and evidence that employee ownership is not only successful in delivering economic benefits, but also social benefits to the public and private sectors of the UK. Further information on the report is available on **www.employeeownership.co.uk/publications.asp** and through Philip Williams at Wrigleys Solicitors LLP.

Contributors

Thank you to the following for their contributions to this issue:

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