

Public Benefit – seeing the wood for the trees

The judgment in the Independent Schools Council's claim against the Charity Commission relating to their guidance on public benefit (and the Attorney General's reference seeking conclusions on related issues) was released on 14 October.

As the Tribunal itself disarmingly remarked 'our decision will not, we know, give the parties the clarity for which they were hoping'.

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The judgment is complex and contains a good deal of close legal analysis not just of the case law but of the wording of the Charities Act 2006. The nature of the claims meant that the Tribunal was able to pursue the logic of the law through to its conclusion in relation to independent schools free from the factual circumstances of any particular organisation. The ISC (rightly) hails the judgment as a victory amongst other things for weakening the link emphasised by the Charity Commission between bursaries and public benefit. The Charity Commission also (rightly) claims to be vindicated in its approach that schools and by extension fee paying charities generally have to justify their public benefit and show that the poor can participate.

So what lessons can charities generally draw from this case which is widely taken to be the most important for charity law for a generation?

- The Charities Act made less difference to what amounts to charitable activity than many thought – and quite possibly less than some intended
- This is because public benefit has always been vital, in the double

sense that the purpose is a benefit to the community and also that those who benefit are a sufficiently broad section of the public

- It follows that "the poor" must not be excluded – the poor not meaning the destitute so much as people who would not be able to pay the full cost of the service
 - Keep your objects firmly in mind. Activity outside your objects will not count for public benefit, however beneficial it maybe to the community. If you have two objects, activity under one will not necessarily count for the other
- Just how to do this is for each charity's trustees to decide. A token provision will not be enough, but beyond that, what is appropriate will depend on their view in the context of the charity's objects, resources and circumstances

The Tribunal will revisit this area later in the year when it looks at benevolent funds such as charities set up by employers to relieve hardship among former employees. This will put a spotlight on what amounts to a sufficiently wide section of the public for a charity to meet the second element of public benefit.

The point to keep sight of is that trustees must have public benefit in mind when making plans and decisions for their charity and challenges are most likely where they do not focus on the issue at all.

For a more detailed analysis of the positions of schools and other educational institutions please visit our website.

If you would like to discuss any issues raised in this article please contact Robert Foster by email on robert.foster@henmansllp.co.uk or by telephone on 01865 781000.

A winning partnership

Congratulations to Soha Housing. Its Safer, Cleaner, Greener approach won the award for the best initiative of statutory and voluntary sectors working together at Oxfordshire Voluntary and Community Action's 2011 Awards.

Partnership initiatives are a key area for the voluntary sector as the traditional patterns of statutory funding change. Managing these arrangements poses new challenges for most third sector organisations and making a success of them usually involves resolving a range of legal and operational issues. Henmans is pleased to have sponsored the award. Here the Soha team is shown with Alison Baxter (OCVA) and Robert Foster.



New guidance on investments

The Charity Commission has published new guidance for trustees on how to exercise their investment powers properly. Apart from reflecting the modern investment landscape far better than its predecessor, the guidance offers fresh advice on how trustees should approach 'programme related investment' (investments which are made by reference to the charity's objects rather than financial returns) and 'mixed motive' investment (where investments are designed to achieve a

financial return but also pursue the charity's objects). The new guidance can be found in CC14 available from the Charity Commission website.

If you would like to speak to Mark regarding topics raised in this article please contact him on mark.drasdo@henmansllp.co.uk.



Mark Drasdo
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Remember the living - maximising legacy income

Charities rely on a range of sources for their income and most, if not all, have been affected by the recent economic downturn and recession. Stock market falls have reduced the value (and to an extent, the return) on investments, budget cuts have reduced statutory grants, corporate donations have decreased, individual donors are tightening their belts, and even the supply of second-hand goods to charity shops has decreased. Coupled with the effects of inflation, and charities being asked to contribute to the government's 'Big Society' agenda, charities are under financial pressure.

Worth around £2 billion a year, gifts in wills are a vital source of income for charities, but legacy income has fallen for the second quarter in the year to June 2011, the two main reasons being falling property and share prices which decrease the value of the estate. However, looking at the contrasting trends will help to target the best ways for charities to benefit from this income source.

Between 2004 and 2008 the top ten charities received over 30% of all legacy income and the top 25 obtained 44%. Research by Remember a Charity has revealed that those making a will are more likely to make a donation to a local charity than to a nationally recognised brand. The challenge for local charities is to implement a legacy policy, and plan their marketing policy, to match the success of the national charities.

There is a huge potential for growth in this income stream. Around 74% of people give to charities in their lifetime, but only 7% say they will leave a legacy to charity. Life-time givers need to be persuaded that even relatively small amounts left in their wills are very worthwhile.

We each, depending on when we were born, have experiences which give us similar attitudes to charitable giving. Understanding these could help to increase the number of donations. People over 65 prefer contact by letter over glossy brochures. Baby-boomers (born between 1946 and 1964) prefer contact by letter, phone or email, and require feedback on the impact their gift has made. Generations X (born between 1965 and 1980) and Y (born between 1981 and 2001) prefer contact by email, internet or mobile phone.

The number of people making wills peaks between the ages of 75 and 85 (the "silents" in marketing speak), and so it is natural for the fundraising focus to be on the silents and on the over 85s - but remember they will be well aware that they need to provide for themselves for an ever greater period and so may want to delay any decision to leave a legacy. Remember too that females leave more charitable legacies than males, but have a greater life expectancy.

The baby-boomers could well provide the best outlook for charitable legacies. Over 10 million fall into this cohort and they hold 80% of the country's wealth. They are individualistic and expect a personalised service. They are open to charitable giving, but they want to be engaged in philanthropy rather than taking a back-seat. They are natural targets for lifetime giving but critical too for longer term legacy planning and translating lifetime givers into legacy givers must be a key objective. Whilst they are good news for the legacy market, they may also have strong views on how they wish their assets to be distributed on death.

Do not ignore generations X and Y because of their relative youth. While the prospect of legacy income from this age group seems remote, the earlier people are engaged with philanthropy, the more likely they are to leave a legacy. Charities should explore social networking websites as a means of connecting with the younger generations.

The potential legacy market is huge – the majority of estates currently make no allowance for charitable giving, and the value of estates is increasing as the value of assets recovers. Tax breaks for lifetime legacies are on the agenda, which would make the baby-boomers and generations X and Y more immediate prospects. A focused effort now can have a marked impact on the success of fundraising and could reap rewards down the line as we all grow older.

If you would like advice on issues raised in this article please contact Angela Bowman or Nigel Roots by email on angela.bowman@henmansllp.co.uk or nigel.roots@henmansllp.co.uk or by telephone on 01865 781000.