

five issues from 2005

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Introduction

The beginning of a new year is often the ideal time to review, resolve, clean up, throw away and get to the bottom of issues which have been put to one side for too long.

Our aim here is to provide treasurers, leaders and trustees with information on five major issues that we found churches faced in 2005 and in doing so we hope that this will help you to sort out and anticipate the issues likely to arise in the coming year.

Some may be directly relevant to you and we trust they are of help; acting as a 'mental spring clean'. Others have wider applications and so, even if they are not concerns that are particularly facing you at the present time, we hope they provide some insight into thinking about issues that churches and other charities have in their life cycle. Either way, we hope that they will be helpful in reviewing present arrangements or planning for the future.

1 **REVIEW the legal basis for the work your church plans to do in the community?**

Many churches are finding that growth in this area is leading them to establish the work under a separate charitable trust. This isn't necessarily for everyone. It does depend on what the plan is in each situation. Very critical are the questions:

- How central is the church in this? and
- How central is it to the church?"

Also it depends on how much risk there is involved, who is funding it (church, local authority or other body), who is to be involved (members of the church or outsiders) and also 'does the trust deed of the church allow it?'

Funding is often the key issue: if the project is appropriate for public funding – through national or local government funding agencies, or from general grant making trusts – it is often easier to attract funds if there is a separate legal entity that is not synonymous with the church. Funders may be uncomfortable funding a church for work they would be happy to fund if it were not 'church'. Also, if the church has significant income and capital, that may harm the prospects of funding applications.

The second point is normally that of 'risk'. Almost all churches are set up as unincorporated bodies, ie not limited companies. If the new project involves a high level of risk, the trustees may want the additional protection that comes from being in a company structure (in relation to possible claims made against the charity) and will need to set up a separate charitable company for this purpose.

If the church plans to undertake significant community work that is outside of the "charitable objects" (purposes) of the church, the activities would have to be undertaken by a separate entity set up by the church.

Look at your own plans, the issues that arise, place them in priority and see whether there is a clear answer. If not seek advice – it is well worth getting it right from the start.

2 CLEAN UP any payments or benefits received by trustees

The general rule set out by the Charity Commission is this: "Trustees are not entitled to receive any payment out of the charity's property other than reasonable and necessary out-of-pocket expenses such as the cost of travel to attend trustees' meetings. Additionally, they must not benefit, either directly or indirectly, from the charity by, for instance:

- Taking a lease of the charity's property;
- Borrowing money from the charity; or
- Making contracts to do business with the charity"

There are proposals afoot that may slightly relax this but they are unlikely to change the position to an appreciable extent.

However, many new trust deeds and company 'articles' allow certain trustees to be paid under certain conditions which are spelled out in the deed. For payments to be allowable it is vital that these conditions are kept to. Members of families of trustees being paid is very rarely specifically authorised although the best new deeds can allow this.

If you want to pay a trustee or a member of their family (for example the Pastor and his wife) and the deed is not clear that you can, it is important to obtain authorisation from the Charity Commission before you do so. This is the case whether you are a registered charity or an excepted charity. For further guidance on this matter please see our free briefing paper 'Payment of Charity Trustees' available on our website.

3 SORT OUT the appropriate employment terms for your pastor

Many churches have to decide whether the pastor should be employed or self-employed. This is an issue that the HM Revenue and Customs (HMRC) and the accounting and legal profession have found fraught with difficulty. Sometimes it is clear one way and sometimes it is clear the other. Sometimes there are aspects that mean it looks as if it could be either way.

What is clear, however, is that it is not just a question of what the people involved would like. Although there is no statutory definition of "employment", the courts have considered this question on many occasions, based on the facts before them. As HMRC put it; "Employment and self-employment are not defined by law, and it is not simply a matter of you or your employer calling your job "employment" or "self-employment". It is something to be decided in a commonsense way on the facts of your case, looking at what you actually do, and the way that you do it."

Ministers of religion are not 'employees'. Employment tribunals have tended to hold this view because there is not a 'master servant relationship' (an important issue in employment) and because of their strong sense of vocation. However they are 'office holders'; provided they work for a specific church typically in one of the denominations. Because they are 'office holders' their income is still regarded as employment income and so they are taxed as employees.

In other situations the Revenue use a checklist of questions to guide them in deciding whether someone is employed or self-employed. It isn't a question of adding up the 'ticks' and the 'crosses' and seeing which has more – You have to look at the picture as a whole and see 'what it looks like' – does it look like someone in business for themselves, or does it look like an employee. Where it is believed that a 'self

employment' status is correct it is recommended that the reasons for this are recorded as matters can change over time, sometimes subtly, and this position should be reviewed periodically. If in doubt you can speak to one of our consultants.

4 ANTICIPATE retirement and pension issues

We are sometimes asked whether a church could give the manse to the pastor when he retires. This question is really one about providing for the retirement of your staff. It normally arises when the thought process hasn't begun far enough in advance. In general, the issue of retirement and pensions needs to be one that is covered with any member of staff and the sooner the better. For some this is done through a traditional employee or personal pension scheme, for others it is by the pastor buying a house at an early stage and renting it out whilst living in the manse.

Where the church and the pastor have not been able to provide for any retirement then emergency measures are required. In some instances the manse, or an element of the proceeds of sale, can be given to the pastor. However there are legal and tax issues and this option should not be taken for granted. In particular, it cannot be assumed that a retirement gift will qualify as a tax exempt golden handshake! In some instances the trust deed under which the manse is held will prevent such a gift from being possible.

Since most manses are extremely valuable assets this is a very significant decision that the church has to make. Alternatives should be looked at and the trustees should take professional advice on all aspects – the legal background, the valuation and condition of the Manse, the way the church will provide for future pastors, the financial alternatives, the tax consequences of these and the impact on the church itself. In any case, do not leave it to the last minute before starting this process.

5 SAVE UP FOR A RAINY DAY (but not too much)

Having the right level of reserves in your bank account is something that is important to you and also will interest the Charity Commission. The right level will depend on your situation. Your current reserves may well reflect the psychology of the Treasurer or finance team as much as accounting practice. We find treasurers for whom no amount, however large, would be quite sufficient and insist the church should always generate a surplus. Then there are leadership teams for whom 'tomorrow never comes' and everything that is received has been committed before arrival. Those thought processes need to be first addressed in coming to the right answer.

In terms of allocating resources, there is a common misconception that the Charity Commission say that charities should have reserves sufficient for 3 months of expenditure. This is not the case. Charities should consider why they are holding the reserves. Where these are 'contingency reserves', what are the possible situations that these reserves are required to cover, and how probable are those situations to arise? This will depend, in part, upon the stability of the income and the length of time expenditure is committed. For example a church with staff and a high committed rental payment will need higher reserves than one whose expenditure can safely be curtailed at short notice.

We are always happy to talk through these issues or, if required, arrange a meeting with one of the finance team to help analyse the individual situation. If you want to discuss any particular matter please contact Stephen Mathews on 020 8502 8588 or stephen.mathews@stewardship.org.uk