

New Rights for Volunteers

Volunteers already benefit from the same protection offered to employees of charities in relation to health & safety and data protection laws. New proposals are likely to further blur the distinction between volunteers and employees.

Following the Government's comprehensive review of the UK's discrimination laws, the Equality Bill (the "Bill") aims to harmonise anti discrimination law by reducing nine existing pieces of legislation into a single statute. A recent proposed amendment to the Bill could have a substantial impact on volunteers' rights to protection from discrimination should it be adopted. More specifically, the changes to the Bill would allow volunteers to take their respective organisation to an employment tribunal over discrimination claims.

There were calls for such a change during the consultation period of the Bill, with evidence that volunteers have either been discriminated against in some form or have been unfairly excluded from certain activities. Should the proposal be adopted, it would be a significant step forward in guaranteeing volunteers rights under statute and would prevent organisations attempting to avoid discrimination laws by relying on volunteers to provide services.

Despite the positive intentions of the amendment and the concerns upon which it aims to address, there are some considerable reservations from within the volunteering sector as to the beneficial impact that it may have. There is also some doubt as to the practicalities of the implementation of the amendment. More specifically, concerns have been raised as to whether smaller organisations would have the adequate resources to develop and manage appropriate policies to deal with the changes, and it has been argued that there has been insufficient consultation with the volunteering sector. In their response to the amendment, Volunteering England have voiced concerns of the level of input that the sector has had into

what will amount to a fundamental change, going as far as to urge policy makers and parliamentarians to resist the change until there has been further debate.

The Bill will no doubt attract further comment from both those who support it and those who doubt its practical implications, but the proposal does appear to be another step to place volunteers' rights on an even playing field with those of employees. Should the changes be adopted, charities and organisation that utilise volunteers will have to carefully review their policies and procedures to ensure that they do not directly or indirectly discriminate. The proposal will create a more formality to what has classically been a very informal relationship. There will need to be increased record keeping and organisations will need to ensure that they have proper policies and procedures in place. The relationship with volunteers will become more formal and organisations will need to ensure that best practice and anti discrimination policies extend to all volunteers. There are increased risks but these can be reduced provided proper policies and procedures are in place and adhered to.

Should you require any help or advice in relation to your current policies or record keeping, please contact Stephen Brodie, a Partner in our Employment department on 0151 600 3150 or stephen.brodie@brabnerscs.com.



Articles and the Company Act 2006

Summary of the principal impacts of the 2006 Act on the articles of a charitable company.



Many clients who are established as charitable companies have asked if they should be concerned about the implications of the new Company Act. Stephen Claus, Head of our Charities and Social Enterprise team, explains below those areas a charitable company should be concerned with.

Anyone requiring a review of these articles to deal with any of these points should not hesitate to contact Stephen Claus who will be pleased to discuss your requirements on an individual basis.

Provisions of the 2006 Act already in force and which have an impact on a charitable company's articles

NB - Please read Trustee for Director as the case may be.

Directors' conflicts of interest

Change

Since 1 October 2008, each director has had a statutory duty to avoid a conflict with the company's interests. This duty is not infringed if it is properly authorised by the directors. The directors of a charitable company incorporated on or after 1 October 2008 have an automatic power of authorisation, unless the articles state otherwise. Private companies incorporated before that date will need express shareholder power to enable the directors to authorise a conflict.

Existing provisions commonly found which allow a director to count in a quorum and to vote notwithstanding any interest he may have provided he has declared that interest will not be sufficient or effective.

Action

Consider amending articles to:

- Empower directors to authorise a conflict;
- Authorise certain specific conflicts; and
- Impose restrictions on the extent to which directors can authorise conflicts.

Annual general meeting (AGM)

Change

Since 1 October 2007, charitable companies no longer need to hold AGMs unless required to do so by their articles.

Action

Consider deleting references to AGM.

The retirement of directors by rotation

Change

If a charitable company dispenses with holding AGMs, but its articles still require the retirement of directors by rotation at an AGM, the directors will still have to vacate office within the period set out in the articles even if no AGM is held.

Action

Articles requiring directors to retire by rotation at an AGM should be amended if no AGM is to be held.

Written resolutions

Change

Since 1 October 2007 private companies have, except in very limited circumstances, been able to pass written ordinary resolutions by a simple majority of those eligible to vote and written special resolutions with a 75% majority of those eligible to vote, rather than requiring unanimity for all types of written resolution as was the case under the 1985 Act.

Action

Consider removing any conflicting provisions.

Director's age limit

Change

The provisions relating to the 70 year age limit for directors in the 1985 Act were repealed on 6 April 2007. Any articles requiring a director's age to be disclosed if he has attained the age of 70 years or more or limiting the age at which a director can be appointed may breach employment legislation.

Action

Articles which require a director's age to be disclosed should be amended.

Company secretary

Change

Since 6 April 2008, a charitable company no longer needs to have a company secretary (unless the articles require one) although if it does, the secretary will have the same authority as has previously been the case.

Action

If a company wants to dispense with having a company secretary, it may need to update its articles.

Extraordinary general meeting (EGM)

Change

The 2006 Act only recognises general meetings and AGMs.

Action

Remove references to EGMs.

Proxies

Change

The rights of proxies under the 2006 Act have been extended and override any conflicting provisions in a company's articles. Articles can extend proxies' statutory rights, but not reduce them.

Action

Articles should therefore:

- Enable proxies to exercise the same votes on a show of hands as the appointing member would have if he was present;
- Specify a time limit of not more than 48 hours before the meeting within which appointments of proxies are to be delivered to the company;
- Specify a time limit of not more than 48 hours before the meeting within which any notice cancelling a proxy's appointment should be received; and
- Where a proxy is appointed by more than one member he may exercise different votes on a show of hands depending on his instructions but only one vote if all the instructing members have instructed him to vote in the same way.

Notice period for general meetings

Change

Since 1 October 2007, the notice period required for a general meeting is 14 clear days, even if a special resolution is proposed (save for meetings called to deal with the removal of auditors or directors). The 1985 Act required a minimum of 21 days' notice for a meeting at which a special resolution was proposed.

Charitable companies may now hold member meetings on short notice with the consent of a majority (in number) of members holding 90% or more of voting shares. This reduces the previous requirement for 95% but is subject to any higher percentage (not exceeding 95%) specified in the articles.

Action

If necessary, amend articles to ensure consistency with the 2006 Act. Unless this amendment is made, a Charity with standard articles may be required to give the longer notice specified by its articles.

Electronic communications with shareholders

Change

The 2006 Act permits electronic communications between companies, members and others, for example, to permit a company to communicate with its members via a website.

Action

Consider reducing the threshold required for a written resolution. Consider amendments allowing electronic communication with shareholders.

Members' power to require directors to call general meeting

Change

The 10% threshold has been lowered to 5% where more than 12 months have elapsed since the end of the last general meeting called at the request of members, and from 3 August 2009 will be 5% in all circumstances.

Action

Many articles refer to the 10% threshold and should therefore be amended to reflect the new law.

Provisions of the 2006 Act due to come into force on 1 October 2009, which will have an impact on a charitable company's articles

Memorandum of association

Change

As from 1 October 2009 the memorandum of association of a company will only contain a statement as to the details of the subscribers to it on incorporation, their intention to form a company and that at least one guarantor is subscribed. Thereafter the memorandum serves no purpose. It will not be possible to amend a memorandum of association.

Action

For information only.

Other existing provisions of a memorandum of association of a company, such as the objects clause and statement as to authorised capital, will be treated as being part of the articles of association. They will be capable of being changed in the same way as the rest of the articles, with appropriate Charity Commission consent where required.

If you would like any further information in relation to the Company Act 2006, please contact **Stephen Claus** on **0151 600 3341** or **stephen.claus@brabnerscs.com**.

“Crisis over?... Now What?”

The consensus view of the economy and therefore the capital markets seems to be moving from one of “is there an end to this crisis?” to the question of “when will we return to growth?” As such, the sentiment of the market is much more positive than even just a few months ago when it was priced for depression. The market low, in March this year, is believed to be the turning point in the equity market as valuations had become too depressed. The FTSE 100 is up approximately 35 per cent at the time of writing, buoyed, in large part, by the banking and mining sectors, but has this now gone too far, too soon? And how are charities coping?

Central banks across the developed world have slashed interest rates aggressively to stave off a deflationary recession and, as such, cash returns are particularly unattractive. This has led to many considering the merits of the stock market for enhanced returns above cash, which may go some way to explaining the rise in the market recently. Of course, there is increased risk with this strategy and the question that must be asked is, given the capital is at risk, how reliable is the income? There are segments of the market that have typically provided reliable income, such as the banks and utilities, however, these former bastions of income generation have been weakened by the crisis (utilities through high levels of borrowing) and in some cases ceased payments altogether. Investment focus for income-reliant charities must therefore be heavily influenced by dividend yield, cover and growth. The recession we find ourselves in has reached most corners of the economy and seeking donations and other alternative income for charities has been tough. This reduced inflow combined with the reduced yield options in the market has made life difficult for charity investments.

The historic account of how we got here is bleak indeed, however, one must not be backward-looking and indeed the future seems, perhaps not bright but, less depressing. There are still investment opportunities in good quality companies with attractive yields, with many of the more defensive sectors having been left behind in the recent rally, for example pharmaceuticals and oil majors. Perhaps more



contentiously, the property sector appears to be reaching the bottom, if the IPD Index reading of +0.56 per cent for July is to be believed. This is the most positive move since August 2007 and is supported by data in the US where the Case Schiller 20 City Index had shown a positive reading in June. There are still valid concerns regarding tenancy default and voids, but the yields on offer do appear attractive both historically and relative to other asset classes currently. However, timing is crucial and property company share prices, many of which are trading above net asset value, may be too optimistic at this stage.

The world is now truly a global economy and, as such, overseas opportunities cannot be ignored. Savings-rich Asian and Middle Eastern economies have been relatively resilient up to now and could be major factors in the global economic resurgence. Income had previously been a stumbling block for this region but this is lessening as a detracting factor with attractive income yields on offer.

However, whilst the outlook is more positive, one must be aware of the headwinds that face the economy. Unemployment continues to rise, house prices seem to be stabilising but are by no means rising and bank lending remains subdued; be it through lack of demand or constrained supply. Companies have been aggressively cutting costs and this has led to earnings surprises in the latest round of reporting, however, these measures have a limit and sales growth will be required for earnings to progress from here.

Continued overleaf

The consumer remains weakened by lower asset values (houses and financial assets) as well as heightened fear of job security and, as such, significant recovery in demand may be muted.

From an investment point of view, although the overall index has performed well, elements within it have diverged. Selective investing remains value adding and focusing on balance sheet strength as well as end-user markets will be the key to finding these. Crisis has been averted through political and monetary intervention but these one-off stimulus packages are unsustainable and the market economy must return as the driver.

The market has swung from wildly pessimistic to one of

optimism in a short period of time and may pause for breath before further supportive data provides grounds for a more sanguine view of the future. Central banks have indicated they are in no hurry to increase interest rates in the near future and therefore if the recovery is underway then this resultant sweet spot should prevent anything more than a mild correction in markets.

Adrian Maxwell is Investment Manager at Rathbone Investment Management.

If you require any further information in relation to this article, please contact **Adrian Maxwell** on **0151 236 6666** or email **charities@rathbones.com** This article was current in August 2009.

Our New Venture into Training



We are pleased to announce we can now offer bespoke training for those in the Charity sector.

In an exciting new development we have recruited Gillian Ashall, who spent 11 years with the Charity Commission before more recently working in the charity sector based in Preston.

We will shortly be announcing our accredited training programme that can provide real qualifications for those in the third sector.

Courses on offer will cover topics such as How to set up a Charity, Charity Accounting and How to demonstrate Public Benefit.

Gill's role as Training and Charity Support Executive will see her develop and deliver a range of courses aimed at participants from grass roots level right up to Chief Executive level.

As our courses will be accredited, learners will have the added advantage of being able to work towards gaining a recognised academic qualification.

Gillian Ashall can be contacted on **0151 600 3362** or **gillian.ashall@brabnerscs.com**.

Brabners expands Charity and Social Enterprise Team

We are delighted to announce that we have appointed Deborah Walton as a Senior Associate in our Charity and Social Enterprise team.

She joins us from a large Birmingham practice where she is currently the CEO of a substantial charity. Deborah is a very experienced solicitor and has spent almost 10 years providing training and legal advice to charities in and around the Birmingham area, including spending time with the Treasury Solicitor's Office.

Deborah has been an associate of Stephen Claus' since the mid 1990's and they worked together on a prosecution case brought on behalf of the Charity Commission and, to date, there have only ever been

two such prosecutions. Her skills are therefore extremely valuable in understanding the statutory regime within which charities work.

Stephen Claus, Head of Brabners Chaffe Streets Charity and Social Enterprise team said,

"This addition to our team will both strengthen and broaden the breadth and depth of services that we can offer to charities throughout the North West. Deborah's recruitment at this time is a measure of the success that we are enjoying in the sector and we are delighted to say that clients are returning to us time and time again, something which we greatly appreciate".

Grant Making Charitable Trusts

Many operational charities are reliant on the support of grant making charitable trusts to assist their day-to-day operations or to fund specific projects.

Many of these Trusts were set up a 100 years ago or more in Victorian and Edwardian times, when there was perhaps a greater sense of civic pride and a desire to give something back to the communities in which the philanthropist's wealth was generated. In the immediate North West there are still many large grant making charitable trusts that stemmed from some of the great industrial families of the nineteenth and twentieth centuries such as Leverhulme, Pilkington etc.

Many commentators may correctly say that part of the motivation for this philanthropy was due in part to the appalling working conditions and health and hygiene standards that were often encountered at that time. Liverpool itself is a city that was founded and had its heyday in the times of Victorian merchant wealth and the city is littered with fine civic buildings many of which were funded and furnished through civic pride and philanthropy.

Is this still relevant in the modern age? The answer is firmly yes. As a firm we regularly advise our clients over the creation and maintenance of grant making charitable trusts. Quite often the focus of charitable gifting may have changed from the relief of acute poverty and health and hygiene issues, into those who have strong concerns for the elderly, cancer or the environment.

However the motivation for gifting and giving back wealth to the community remains broadly undiminished.

There are also other good reasons why families consider the creation of grant making charitable trusts. Often families have run and controlled business for many generations, but there comes a point in time when there is no clear family succession or desire to retain the family business interest. The glue that the family business provided is lost once the company is sold. A grant making charitable trust, run by the family, can in part replace that glue and gives a focal point for family activity on a regular basis which would otherwise be lost. Younger members of the family can be involved as Trustees and this gives them a sense of value and involvement in the charitable sector which might not otherwise exist, and on many occasions can lead to them becoming actively involved in charities which the family trust supports.

There are still generous tax advantages involved in the creation and support of grant making charitable trusts in terms of inheritance tax, capital gains tax and income tax relief. Many clients with significant income streams are pleased that their donations to charity can be augmented by the tax relief available.

Anybody requiring any further information in relation to Charitable Trusts should contact **Mark Feeny**, Head of our Private Client department on **0151 600 3450** or **mark.feeny@brabnerscs.com**.

Charity and Social Enterprise Team

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Brabners Chaffe Street LLP is a leading law firm based in the North West. Its business focus is on providing the full range of legal services to the mid corporate sector, specialised services to the plc and larger corporate, plus private client services to business owners and other high net worth individuals. Brabners Chaffe Street also operate in the Charity and Social Enterprise Sector.

For further information in the first instance contact Stephen Claus on +44 (0)151 600 3341.

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