

APPLICATIONS FOR DISPENSATIONS – COUNCILLORS ACTING AS TRUSTEES

1. INTRODUCTION

- 1.1 Members may recall that at their meeting held on 10th September 2003, and following their consideration of an application for dispensation from a parish council, the Committee questioned whether it was prudent for all Members of a local council to act as trustees to a community facility on the basis that it might be in the better interests of the parish if other individuals unrelated to the local council were invited to act as trustees. While recognising that this was a constitutional issue for local councils to address, the Committee requested that representations be made to the Charity Commission, the relevant Government Office and the Local Government Association in this respect.
- 1.2 Letters were duly sent by the Monitoring Officer to the Charity Commission, the Office of the Deputy Prime Minister and the Local Government Association. As no replies had been received despite reminders sent in April 2004 the Committee, at their last meeting, requested the Monitoring Officer to take further steps to elicit responses and to draw the attention of the organisations to Members' concerns.

2. REPLY FROM THE CHARITY COMMISSION

- 2.1 A reply to the Committee's concerns has been received from the Charity Commission.
- 2.2 The Commission confirmed that they are familiar with circumstances when local authorities act as sole trustee for charities or have Members or their nominees as individual trustees for charities and the inevitable conflicts of interest which may arise from this relationship. Guidance to charities on how to manage conflicts of interest is available. This refers to situations where there are conflicts of loyalties where trustees are nominated or appointed by a local authority or where a local authority is a sole corporate trustee. Further guidance relating specifically to local authorities acting in some capacity as a charity trustee is also publicly available.
- 2.3 To quote from the letter from the Charity Commission – "we do recognise the difficulties that can arise, particularly when a local authority is a sole trustee or majority of trustees are Members of a local authority. Our advice on managing the conflict of interest from the charity perspective is for people to declare or keep a register of conflicts and to absent themselves from any decision when the conflict is live. Clearly when this involves the sole corporate trustee or the majority of trustees, the problem is having sufficient non-conflicted trustees to make the decision. Where this impasse occurs or is likely

to occur on a regular basis then we recommend that a charity should review whether its trustee arrangements are suitable. We can assist by making a scheme to establish new trustee arrangements which avoid the conflict or make it more manageable, for example by appointing individuals unrelated to the local authority to act as trustees.”

- 2.4 “It is of course possible for a charity to continue with the conflicted situation by declaring the conflict but allowing trustees to continue making decisions on the basis that the trustee or trustees are nonetheless clear that they are acting in the interests of the charity. There are benefits to having a local authority as a sole trustee and many charities do operate perfectly well on this basis where the distinct roles are recognised. However, there are risks when the roles as trustee and as local authority are confused, including issues regarding ownership of land etc. There is also a risk that where decisions are not demonstrably made in the interests of the charity, any agreements or contracts entered into may be set aside and a trustee or trustees may be found to be in breach of trust if they have not in fact acted in the best interests of the charity. We may also then use our powers to ensure that there are sufficient non-conflicted trustees for the charity to continue to operate”.
- 2.5 In terms of applications for dispensation which the Committee is required to consider, the Commission, whilst acknowledging the local authority decision-making process, has suggested, in response to the concern expressed, that Members may wish to advise local councils in Huntingdonshire of the Commission’s recommendation for changing the trustee body to avoid continuing conflicts where they might interfere with the smooth running of a charity.

3. CONCLUSION

- 3.1 The Committee is requested to note the content of the response received from the Charity Commission and to consider whether, in the light of guidance available from the Commission, town and parish councils in Huntingdonshire should be invited to ask the Commission to review the Constitution of any local charitable trusts to which it refers.

BACKGROUND PAPERS

Letter received from the Charity Commission for England and Wales dated 27th August 2004.

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