

Governance and faith organisations

Shivaji Shiva of Michelmores Solicitors considers legal issues encountered by faith-based charities.

The first case to be heard by the Charity Tribunal was initiated earlier this year by a former trustee of Sivayogam, a Hindu charity that runs temples in Tooting and Wembley. The case is an appeal against the Charity Commission's decision to remove the appellant, Nagendram Seevaratnam, as a trustee of the charity.

It is not surprising that the first appeal involves a religious charity. Many of the more difficult decisions which face the Charity Commission relate to faith groups. This is reflected in the number of those decisions which result in decision reviews under the Commission's internal procedures or applications to the Independent Complaints Reviewer.

A more unusual aspect of this case is the availability of a book *The Devils Chase the Hindu Gods* in which the appellant trustee sets out his version of events together with over 650 pages of copy correspondence¹. Mr Seevaratnam says in the introduction to his book that he aims to make the background to the case "known to the rate payers, their representatives and those who may be in a position to see that justice is done". He goes on to complain that "The powers of the Charity Commission under the Charities Acts are too broad".

¹ Published by Era. Mathivaanan.
Available from Sivayogam for £10.00

The judgment on Mr Seevaratnam's appeal will be of interest to many for any insight it offers into the approach of the new Charity Tribunal as well as the decision on this particular case. Meanwhile, the application highlights the difficulties which many faith groups encounter with charity law and the concerns raised by many faith groups about the approach of the Commission. It also prompts reflection on the steps which the Charity Commission has taken to address those concerns.

Common issues for religious charities include the following:

- The role of the spiritual leader
- Employment law and spiritual leaders
- Membership and conflict
- Property ownership
- Fundraising appeals

The role of the spiritual leader

Many religious organisations are led by a charismatic individual. Often the individual concerned is paid by the charity. In theory, the charity trustees are ultimately responsible for the management of the charity and must therefore control the activities of the spiritual leader. Some commentators have suggested that religious organisations should be excluded from the constraints applied to other charities in

recognition of the fact that they do not fit comfortably within the framework of charity law.

Employment law and spiritual leaders

A similar issue arises in relation to the employment status of spiritual leaders. Because of the nature of the role, the congregation and the priest, imam, rabbi etc, may be reluctant to discuss the terms on which he or she is employed. The principles of employment law apply to spiritual leaders just as they do to anyone else. As such, the organisation should ensure that all parties understand the nature of the relationship which exists, i.e. is the individual to be a volunteer, employed, or genuinely self-employed? If the spiritual leader is to be an employee, the organisation should issue particulars of employment within two months of the date on which the individual takes up the post.

Traditionally, Church of England vicars have not been subject to the usual rules of employment law in that they were treated as office holders and not as working under contract on the basis that in effect their principal duty is to God. Recent developments challenge that position. (See, for example, the decision of the House of Lords in the case of Percy (AP) (Appellant) v. Church of Scotland Board of National Mission (Respondent) (Scotland) and the Employment Appeals Tribunal decision in *New Testament Church of God v Stewart* (2006)).

A related issue is the extent to which a faith-based organisation can argue that it is a 'Genuine Occupational Requirement' that staff should have an active belief in the faith concerned. The decision earlier this year in *Sheridan v Prospects for People with Learning*

Disabilities highlighted the need to consider on a post-by-post basis whether the requirement of faith is a Genuine Occupational Requirement. Failure to do so may expose the charity to claims of discrimination on grounds of religion.

Membership and conflict

The role and status of members is a regular source of difficulties for charities established as companies or unincorporated associations. The task of maintaining membership records is easily neglected in the face of more pressing deadlines. This may cause little or no difficulty in the usual course of events but can be critical if an internal dispute arises. It may, for example, be impossible to determine whether charity trustees have been validly appointed without first identifying the individuals who are members and therefore entitled to vote.

The problem is often exacerbated in religious organisations where the constitution may entitle any person in an ever changing congregation to take part in the governance of the charity as member. It is important to regularly review the membership structure of the organisation and consider whether it remains appropriate. It may, for example, be appropriate to recognise a separate category of 'informal membership' which enables individuals to receive information on the affairs of the organisation – and may carry other benefits – but does not entitle the individual to take part in the legal affairs of the organisation.

The introduction under s29A of the Charities Act 2006 of a power for the Charity Commission to determine the membership of a charity provides some assistance in this area. However, the Charity Commission will not be eager to be drawn into such disputes and complex issues of

fact will arise. As such, it will generally remain necessary for charities to seek legal advice on the interpretation of existing membership records.

Property ownership

The mosque, church or other building in which services take place is the main asset of many charities. Many religious bodies are established as charitable trusts or unincorporated associations which cannot hold property in their own names. As a result, the property is often held in the name of several 'holding trustees' who agree to take legal ownership of the property. Often the individuals chosen for this role are senior members of the community served by the organisation concerned. Problems frequently arise where the role of holding trustees is misunderstood. In particular, it is important to recognise that holding trustees must generally follow the instructions of the charity trustees unless those instructions are unlawful. Addressing difficulties of this sort can be extremely difficult once a dispute has arisen and positions are entrenched. It is therefore important to ensure that all parties are made aware of their roles and responsibilities.

Fundraising appeals

Many religious groups have a strong tradition of fundraising through collections during or immediately after services. Many religious buildings have been funded on this basis. Care is required when raising significant amounts in this way. Potential problem areas include:

- A lack of clarity as to the conditions on which donations are made: for example, must the new building be used exclusively for religious services in strict accordance with the relevant tenets of the faith concerned, or can it be used for broader purposes including, for

example, the celebration of weddings or other community events?

- A failure to specify how the money will be dealt with if the proposed purpose cannot be achieved: for example, it proves impossible to raise enough money to fund the purchase of the hoped for building.

The Charity Commission's response

There have been improvements to the manner in which the Commission makes and communicates decisions relating to faith-based organisations. An example of this is the publication *Conflicts in your charity - A statement of approach by the Charity Commission*. This makes clear that the Commission will not always intervene in the internal disputes which have in the past taken up a great deal of Commission time. The Independent Complaints Reviewer to the Charity Commission, Jodi Berg, noted in her 2007-08 report that fewer complaints have reached her in relation to issues of this type. The developing work of the Faith and Social Cohesion Unit has also contributed to greater understanding.

It is to be hoped that the number of complaints made by faith groups will continue to drop. It is, however, unlikely that they will cease altogether. The examples above represent a small selection of the difficulties commonly encountered by faith groups. Ultimately, the legal challenges faced by faith groups are as varied as the groups themselves.

Further Information

Other sources of information on this and other legal issues include:

- **The Charity Commission**
www.charitycommission.gov.uk

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- **The Charity Law Association**
www.charitylawassociation.org.uk
 - **Michelmores**
www.michelmores.com

For more information contact:

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