

APSE Best Value Consultancy

Developments in Case Law

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Overview

- Forms of Leisure Trust
- Charitable Status?
- Who should be involved?
- Transferring Land and Assets
- Staff and TUPE
- Legal Agreement(s)
- Procurement
- State Aid

Forms of Leisure Trust

What is a Trust?

- Unincorporated Association
- Company – usually limited by guarantee
- Industrial and Provident Society
- Charitable Incorporated Organisation
 - From late 2009 / early 2010

Not usually a Community Interest Company (CIC)
nor Community Land Trust (CLT)

Forms of Leisure Trust

- Advantages of being a separate legal entity
- Powers
 - Leisure - s19 Local Government (Miscellaneous Provisions) Act
 - Recreational Charities Act 1958
 - Wellbeing
 - Other, ie entertainment / tourism

Charitable Status?

What it means in practice:

- Charitable objects and purposes
- Permanent Endowment
- Must be independent of funders etc
- Regulated by Charity Commission
- What is in scope?
- Decision of charity Commissioners, ie Trafford and Wigan 2004

Charitable Status?

- NNDR Relief
- VAT advantages
- Tax Advantages
- Ability to seek wider range of funding
- Community involvement
 - New best value duty to involve with effect from 1 April 2009

Who should be involved?

What sort of structure and people?

- 2 levels
 - Members (stakeholders) ie users / local community representatives / other
 - Trustees (board) - Independent – a source of skills?
- Council representatives (?)
 - Councillors or officers
- Private Sector Partners / “Hybrid Trusts”

Don't forget duties and responsibilities of directors/trustees and potential for personal liability

Transferring Land and Assets

- Lease or licence?
- Structure, major repairs and replacement of plant etc
- General repairs and maintenance
- Valuation and best consideration
- Equipment
 - Replacement
- End of the arrangements

Staff and TUPE

- New structure
- Secondment?
 - Astley v Celtec
- TUPE transfer on existing Terms & Conditions
- Best Value and 2 tier workforce Issues
- Equal Pay and Single Status

Legal Agreement

- Grant or Service contract
- The differences and the implications
- Governance arrangements
 - Accountability
 - Funding

Procurement

- Part A or Part B
- Advertising – OJEU or other form?
- Potential TECKAL exemption if controlled by contracting authority

State Aid

- 4 tests of Article 87
 - Aid ie financial assistance
 - Favouring an “undertaking”
 - Affecting trade between member states
 - Distorts or threatens to distort competition
- Is there an effect on trade?
 - Dorsten Swimming Pool case
- Services of General Economic Interest (SGEI) / Altmark decision

Conclusions

Developing areas:

- EU Procurement / State Aid law
- Grants v Service Contracts
- Charitable developments in Charities Act 2006 including new Charitable Incorporated Organisation
- Impact of the Credit Crunch
- Ensuring an audit track

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