

The Provision of Alcohol by Charities

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1. What the relationship should be

Once the trustees have decided that the supply of alcohol by a third party represents the best use of the property and resources concerned, they should bear in mind that the relationship should primarily be an arrangement which is aimed at efficiently raising money for the charity. The charity therefore must protect its interests by setting up an arrangement where the bar business is at arm's length from the charity. Thus there needs to be a proper agreement over the use of the property, funding and payments to the charity. The trustees must be clear as to how the charity will derive benefit from the arrangement. Often we encounter situations where the arrangement has gone wrong for a variety of reasons and we may need to provide the trustees with guidance on how they may rectify matters.

Whilst village halls and community associations and their connected bar businesses may be the charities most affected, caseworkers should bear in mind that these issues can easily arise with other charities.

2. Is it appropriate for a charity trustee to be on the committee of the bar business?

2.1 Connected trading company

The answer to this depends on whether or not the bar business is being run by a connected trading company of the charity. If so, it is, in effect, an investment of the charity. The trustees must use their administrative rights as members of the connected trading company to ensure that the company is run in the economic interests of the charity. This will usually mean that the trustees are represented on the board of directors of the company. Trustee/directors will have duties both to the company and to the trust, and those duties will not always coincide. However, paragraph 50 of CC35 recommends that this should be managed by having at least one trustee who is not also a director and at least one director who is not also a trustee.

2.2 Where the bar business is independent of the charity

Where the bar business is independent of the charity, so that the only relationship is that of landlord and tenant or licensor and licensee, caseworkers should bear in mind the following points and the points in section 3. The position is different from that where the bar business is being managed by a connected trading company because the charity's economic interest in the bar business is derived solely from the lease or licensing arrangements.

People who are charity trustees often wish to become members of the committee of the bar business. Caseworkers should be aware of the difficulties when trustees of the charity become members of the committee of the bar business.

Trustees are often under the misapprehension that there are perceived benefits in having some individuals who are on both the charity and the bar business committees. This is often done because the trustees wish to demonstrate some form of control over the bar business, but inevitably the individuals concerned will face a conflict of interest because:

- when acting for the bar business they will need to act in **its** best interests; and
- when acting for the charity they will need to act in **its** best interests.

There will inevitably be issues concerning the relationship between the two which are going to cause problems.

Transactions involving both the charity and the bar business may be invalidated if the same people are managing both, and loss to the charity may result.

The charity trustees should therefore consider maintaining control through reporting procedures and through the lease or licensing arrangements.

For example, in the case of a village hall, we would expect the appointed members of the committee of management to come from groups who have objects in line with the Recreational Charities Act 1958. This is to avoid putting people in a situation where their own and the charity's interests may conflict. However, there will be occasions when an independent bar business can appoint someone to serve on the committee of management, but, in view of the potential for conflict of interest, this situation should not be encouraged.

Caseworkers will need to decide whether the relationship between the two bodies is a contributory factor to any perceived problems the charity may be facing. If so, they should look more closely at whether there have been any major decisions in the past which have been affected by conflicts of interest (for example, with regard to any lease or contract between the charity and the bar business) and which might be set aside if they are not in the charity's best interests. [OG 63 B4 section 4](#) provides guidance on disposals to connected persons. Alternatively, caseworkers could take this opportunity simply to encourage a better separation of the two bodies.

If the situation does not improve caseworkers should obtain legal advice to consider referring the case for evaluation with a view to opening a s.8 inquiry under the 1993 Act.

3. What constitutes conflict of interest in this context

Where there is a contractual relationship (such as a lease or licence) between a charity and the bar business, an obvious conflict of interest arises for any trustee who is also a member of the committee of that organisation, whenever the trustees discuss questions relating to that contractual relationship.

That would include:

- questions of negotiating and agreeing the terms of the lease;
- compliance with the terms of the lease;
- enforcement of the terms of the lease against the bar business;
- renegotiation or renewal of the lease;

any question, in fact, in which the bar business has an interest that is potentially adverse to that of the charity.

4. When a trustee should consider withdrawing from a trustees' meeting

Where a trustee has a conflict of interest and duty in relation to a particular matter, for example, concerning the enforcement of the terms of the lease against the bar business, he or she should consider withdrawing from any meeting at which the matter is discussed.

This will be sufficient to resolve the conflict of interest where the governing document specifically permits trustees facing a conflict of interest to withdraw from appropriate meetings.

The governing document may either permit or require the trustee with the conflict of interest to withdraw from the meeting. However, the transaction in question will, of course, only be secured if the trustee with the conflict does withdraw.

Where the governing document is silent on this matter, the general law will apply. A strict application of the principles would mean that the mere existence of a conflict of interest might provide grounds for the transaction concerned to be set aside if it is not in the interests of the charity. This would be so, even if the trustee(s) concerned withdrew from relevant meetings. In practice, however, the risk of a transaction being set aside is likely to be reduced if the trustee(s)

concerned play no part in the discussions over the issues over which they face a potential conflict. Where individuals find it difficult to decide how to proceed, they should take their own legal advice on the matter.

Obviously if a trustee regularly withdraws from decisions of the trustees on this basis, there must be a question whether his or her usefulness as a trustee is being reduced to the point where it might be preferable to appoint someone else in his or her place.

5. Funding the bar business

Plainly this question only arises where the bar business is run by a connected trading company of the charity.

Caseworkers should bear in mind the following points:

- Funding this or any other type of connected trading company should be justifiable as an investment of the charity, and should be made in accordance with the usual principles relating to investment by charities. This means, for example, that the charity should not make a grant to the connected trading company, nor should the charity purchase equipment for the company. This is explained further in [CC35](#).
- The Inland Revenue take a view about a charity's tax position and that of any connected trading company and we must not attempt to give definitive advice on this matter. However, our advice should ensure that the trustees comply with their legal duties as trustees.
- The connected trading company should always seek funding from a third party: CC35 explains the preference for this. Breweries are often keen to provide finance.
- If the charity does provide funding, it must be as an investment. The Trustee Act 2000 confers wide powers of investment which should not make this a problem, as the powers are conferred by law. However, the trustees must still be satisfied that funding the connected company is a sensible investment for them to make. They will need to obtain advice on whether the investment will be in the interests of the charity. The loan must always be secured and properly supported by formal arrangements and carry interest and a realistic repayment schedule. Despite the fact that the Trustee Act 2000 confers a power on trustees to invest in connected trading companies, they will still have to be prepared to satisfy the Inland Revenue that the investment is made "for the benefit of the charity and not for the avoidance of tax" if they wish to avoid the risk of a restriction of their charity tax reliefs.
- The trustees also have a duty of care. They must exercise reasonable care and skill. What is reasonable depends on a trustee's special knowledge or experience - actual or claimed. This applies not only to powers of investment under the Act but to other powers of the

same type.

Caseworkers should bear in mind that the points set out above relate to where the bar business is run by a connected trading company. If the bar business is entirely independent of the charity any loan by the charity to an independent company would have to be clearly justified on investment grounds (see [OG 63 B3 section 5](#)).

6. Brewery loans

6.1 The bar business

There would be no objection to the bar business taking out a loan and securing it against property to which it has good title (usually in terms of a leasehold interest).

6.2 Can the charity enter into agreement with the brewery

A charity should not borrow money for the purposes of a bar business, or guarantee a loan taken by such a business. Such transactions would not further the interests of the charity.

Caseworkers who identify such a transaction should take suitable legal advice.

If such a loan is taken out, or such a guarantee is given, by individual trustees, they will be personally responsible for any liability under the agreement, and have no recourse to the charity's assets. Any express charge over the charity's assets to secure the loan/guarantee is likely to be void.

If the loan is taken out, or the guarantee is given, by a charitable company, the transaction may either be void, or, if enforceable against the company, the company will have a right of recourse against the directors who were responsible for committing it to the transaction.

Where caseworkers come across such a situation they should set out what the correct position should be. When this is explained (normally through the trustees' legal advisors) the brewery is normally co-operative in reaching a satisfactory conclusion, particularly if its security is at risk.

When cases present difficulties, caseworkers should obtain legal advice.

7. Issues which may require our intervention when problems arise between the charity and the bar business

7.1 In what circumstances can we intervene

If the situation looks as if a dispute is breaking out, caseworkers need to act in accordance with our standard procedures.

We are responsible for promoting the effective use of charitable resources. To this end, we offer charities support and advice and, where necessary, carry out investigations to check abuses.

We will only become involved in cases where our powers and responsibilities will enable us to be of use. We cannot, usually, for example, become involved in disputes between a charity and its employees, or in a dispute involving a contract and a third party.

Sections 7.2 to 7.5 provide examples of when we should intervene. Section 8 provides what courses of action are available to us.

7.2 The assets of a charity are substantially at risk

The trustees may have entered into inappropriate loans (especially unsecured ones). There may be no formal agreement regulating the use of premises by the bar business or a very low rent or fee may have been charged.

A further situation is where a loan has been taken out by the directors of a bar business, but the brewery mistakenly obtains a Court Order to seize the assets of the charity, not realising that the assets of the charity are not answerable for such payment. Caseworkers should be aware that breweries do not necessarily appreciate the situation to which they have been party. However, whether a mistake or not is involved, the matter must still be remedied.

Persons who manage the affairs of the bar business may, mistakenly, think that this body itself exists for charitable purposes. For example, they may not understand the reasons why they are paying the market rent for the use of the premises.

7.3 The purposes of a charity are not being carried out

There are situations where the bar business has, in effect, taken over the charity, and is using the charity premises for its own purposes. This can be a gradual process where, for example, the trustees may even have lost sight of the original purposes of the charity. In the case of a village hall or community centre, local organisations may be prevented from using the premises because of this.

Even in cases where the charity **is** still operating caseworkers need to consider whether it is operating in a way that is in fact only incidental to the operation of the bar.

Warning signs might be that:

- the bar has taken up so much of the charity's property that the charity cannot carry out its activities efficiently; and
- bookings are made to fit around the bar's priorities.

There may be historical ties between the two bodies. However, relations between the charity and the bar business should be at arm's length. The charity trustees should avoid a too personal approach which may imply a closer relationship than that between landlord and tenant.

This situation may come to light in various ways and will often require firm, but tactful, handling (see [section 8](#)).

7.4 The charity trustees are acting outside of their powers or are in other ways breaking charity law

Caseworkers should look for the following:

- a large degree of commonality between the membership of the committees of the charity and the bar business may give rise to significant conflicts of interest;
- the bar business may have entered into an agreement to occupy charity premises which in law is a lease which the charity either has no power to grant, or has not been made in accordance with s.36 of the 1993 Act;
- the charity may in fact be carrying on the business of supplying alcohol itself when it is inappropriate to do so.

7.5 The administration of a charity has completely broken down

Whilst this could apply to the examples set out in section 7.2 to 7.4 above, caseworkers should also bear in mind that where a charity committee is so factionalised over the issue (between, typically, pro and anti bar business interests) that, for example:

- meetings are not being properly summoned or conducted; and
- records are being withheld,

we need to become involved to put the administration back onto a proper footing.

8. What action should we take?

8.1 Identifying the issues

Caseworkers should carefully identify the issues. For example, on the face of it there may be a problem with the terms on which the bar business occupies the charity's premises, but underlying this might be severe conflict of interest problems.

8.2 Do we need to become involved?

If there is only likely to be a small amount of use of the charity's premises on the basis of a licence then we may not wish to follow the situation closely, but simply provide advice. This issue may be covered by the monitoring programme. If on the other hand, we discover a situation where a charity has been directly providing alcohol on a large scale and we need to intervene, it may be that we will want to be sure that the trustees take prompt corrective action after we have explained to them what is needed.

8.3 What is our role?

Caseworkers should consider what precisely our role is and what our objectives should be. Will our approval to any arrangement be required under section 26 and/or 36 of the 1993 Act or will we become involved in giving advice on how to proceed?

The objective is to see the administration and operation of the charity placed on a proper footing. However, caseworkers will need to give some thought to:

- how long we are prepared to allow for this to happen; and
- what realistically we can expect.

Sometimes the objective might only be achievable if the charity premises are sold (because there is no realistic prospect of the property being used for primarily charitable purposes) and the nature of the charity changed into a grant-making one. The amount of change involved will inevitably require careful handling by us and the trustees.

It is important to be clear about our role and objective. Caseworkers in Charity Support should follow our standard guidance on case progression.

8.4 How can we persuade the trustees to comply?

It is usually helpful to set out what is expected. Trustees should be familiar with [CC27](#), perhaps backed up with a summary from us of what we would expect to see as a model of good practice in the particular case. It can also be useful to provide copies of [CC60 Hallmarks of a well run charity](#).

It may be helpful if caseworkers contact the trustees and state the position as we understand it.

The bar business should only be in occupation of the premises:

- with the charity's permission, because the trustees believe the arrangements to be in the best interests of the charity;
- because the space used is surplus to the charity's requirements; and
- to provide an income for the charity (which should then be applied for charitable purposes).

We should point out that the trustees of the charity are duty bound to protect the charity's assets. Where they are letting out a part of the charity property (for example to a bar business under an occupational license), they are required by law to maximise the potential income from the property, in the charity's best interests.

The charity trustees are ultimately responsible for ensuring that the charity is administered efficiently and effectively for all its beneficiaries.

This includes ensuring that:

- proper arrangements are in place; and
- the part of the charity premises that are not needed for the purposes of the charity are let on an occupational license or lease.

The charity trustees must ensure that any rent owed to the charity is paid in full.

If the trustees are unable or unwilling to deal with our concerns, consideration should be given to referring the case to Evaluations as a possible case of mismanagement.

If the trustees are unwilling to rectify the situation, for example, by selling the premises if they are no longer required for charitable purposes and applying the proceeds for charitable purposes, consideration should be given to referring the case to Evaluations with a view to possible

remedial action, including removal of trustees.

We might want to set demanding timescales and ask to see the documentation (such as, for example, advice from the surveyor to the charity and the draft of any lease or license) to ensure that all is in order.

8.5 Options available if we need to adopt a stronger line

The options available to the caseworker obviously depend on the circumstances. However, these could range from:

- a referral to ID / Evaluations;
- issuing directions under s.8 of the 1993 Act, where a s.8 inquiry has been opened;
- issuing an Order under s.9 of the 1993 Act;
- calling for the provision of documents; and
- liaison with the licensing and taxation authorities.