

For attention of: Chris Lees (Parish Clerk)

Date: 31st January 2017

Wellers Hedleys Charitable Trusts and Parish Town Councils

Attendees on behalf of the Parish Council: David Roome

Chris Waterhouse

Following the above course held on 30th January 2017 by Roger Taylor (RT) our observations and comments are as follows:

A key point raised in the Debra Thatcher (DT) report related to the need for the VH Trustees to register with the Land Registry(LR) when changes occur (new trustees/trustees leaving). Our understanding is that this is the responsibility of the Custodian Trustee i.e. the Parish Council and not the Managing Trustees, the VH. As the Parish Council continues to be the Custodian Trustee and has not changed, this requirement is fully met and no action is needed.

A further point made in the DT report refers to the lack of registration of the lease with LR. Any lease of longer than 7 years should be registered. As DT has researched this, it seems reasonable to assume this is correct. This would have been the responsibility of the Managing Trustees in 1991 but failure to do so does not invalidate the lease. It would however make it more difficult to enforce but since this has never been an issue it is of little importance.

The 1991 lease was drawn up to meet the requirements of a grant for the VH heating. It was the opinion of RT (please note that he had no opportunity to view any documents) that this constituted a second trust to supplement the original trust deed of 1964. At this point it became more complicated as it would seem that because of the £1 rental agreement, (obviously not market value), it should have had a Valuer's Report and the subsequent consent of the Charities Commission (CC) to allow the £1 rental. Without this it would seem the lease is likely to be void and the original Deed of 1964 the only valid document. It was explained that any local authority (our Parish Council) has a responsibility to its rate payers/precept to try to obtain the market rate when disposing of an asset or renting/leasing out that asset even, as it was in this case, a charity in its own area. Agreement would then be reached between both parties as to the sum paid.

A key issue then is where to go from here. Since the lease has less than 4 years left to run is it worth spending money on solicitors to establish the legal validity of the lease should a villager(s) question the view that it is void? Our original concerns were very much about the considerable costs involved if every year we had to de-register/register Trustees with LR. As Managing Trustees we have a responsibility for 'proper fiscal oversight' and to spend the villagers money in this way seems to be counterproductive. As this interpretation of our responsibilities in the DT report would seem to have been incorrect then this is no longer an issue. The remaining issue arising from the DT report would seem to be differences in the 1964 Deed and the later lease relating to the number of trustees allowed. We have abided by the original Deed and there was no definitive answer on whether the later lease, if legal, changed this. How can it be in anyone's interest to pursue this point? It seems that a simple minuted Resolution on the number and make-up of trustees is sufficient to meet our needs. We can then inform the CC of this change.

We tried to establish what our options with the lease are. We could:

- Decide it is void and minute a Resolution to that effect.
- Choose to extend it (problematic if its void anyway), approx cost usually £400 in straight forward extensions. Costs paid by tenant i.e. VH (but in many cases a Parish Council may pay it or part of it). Several delegates explained that some of their charities were being managed and financed by their Parish Council and its Clerk to various degrees, as the charity had insufficient funds and volunteers to meet its commitments.
- Choose to amend it - considerably more expensive. Costs paid by tenant as above.
- Nullify it with the consent of Custodian Trustee - minuted Resolution.
- Let it run its course and then minute a Resolution not to renew it (with reasons)

More general points:

- It seems that although we do register our income and expenditure, trustees etc, with the CC, we do not have to (because our income is less than £5000) but could choose to register instead with HMRC. This does not affect our charitable status and we would still be exempt from paying income tax on appropriate investments and would carry on receiving 'gift aid' etc. A sizable grant however would impact on our income. Even if a charity with income of less than £5000 decides to register with HMRC it still has to present its accounts to its own AGM and in our case the Parish Annual Meeting. This it would seem is a CC requirement of all charities in so far as they have to be seen to be of benefit to the 'members' (in our case the villagers).
- Once a charity always a charity. For example it would be impossible for the PC to retrieve the asset.
- Any permanent building put on land belonging to another charity becomes the property of that land owner.
- Commercial activities are not allowed unless a separate trading arm is set up. For example, the managing trustees could not hire out a Village Hall every Saturday for example to a rug seller if one of the people/organisations for whose benefit the charity was set up for wanted the hall every Saturday. The beneficiaries of a charity always take precedence.
- Where reference is made to the Secretary of State this is now the responsibility of the CC.
- Section 298 of the 2011 Act allows the PC to become the Managing Trustee if necessary with consent of CC.
- If it were decided to pursue the possibility of merging with other Village Charities we should look into a 'Scheme of Amalgamation' through CC. The CC have worked to simplify the process (approx cost £500). It would also be useful at this point to investigate becoming a CIO (Community Interest Organisation) - removes the need for Custodian and Managing Trustees and combines into one body. The new body would have a new constitution in the form required by the CC and subsequently approved by them.

- There was occurring theme raised by delegates regarding the difficulties experienced in recruiting new volunteers to both Village Halls and Parish Councils.
- A full set of Delegate notes will be given to the PC Clerk and VH Committee Sec for further reading.

NB: We have interpreted what we considered to be the relevant points made during the course of the Training Session to the best of our ability and tried to tread carefully but have no legal background in Charitable Trusts. Where reference is made to 'we' this relates to the VH Trustees and not the PC.