**Further Aspects of Issue Relating to Religious Charities**

Welcome to this podcast on accounting issues relating to religious charities; my name is John Caladine.

In my previous podcast I introduced you to religious charities and some of the issues of excepted and exempt charities. The purpose of this podcast is to talk about the concepts applying to all religious charities, then to deal with some specific issues relating to those types of charities.

Prior to the Charities Act 2006, religious charities were generally regarded as excepted charities, without the need for registration with the Charity Commission. In the last few years, it has now become necessary for these excepted charities with income above £100,000 per annum to register with the Charity Commission. And it is the intention that those charities below £100,000 per annum income will have to register in 2012. However, there is a general review of this position expected in 2012, although, with all the various pressures the Government and the Charity Commission face at the present time, one wonders whether this will be delayed.

Religious charities, whether registered or not, have to prepare accounts in accordance with the accounting regulations of the Charities Act. And, if registered as a company in accordance with company law, they are subject to an independent examination, if the income is above £25,000 per annum and below £500,000 per annum, and subject to audit if the figure is over £500,000 per annum. There is also this caveat for a company charity that if the gross assets of the trust are in excess of £3.26m then audit is required, irrespective of the level of income. If an unincorporated charity the gross asset threshold still applies, but with an income threshold of £250,000 per annum.

Religious charities have to apply the same principles of good governance and carry out such things as risk management. As with other charities, religious charities have to demonstrate public benefit. It is generally regarding that a service of public worship is a public benefit and of course many religious charities offer other activities, not only in the form of worship, but bible study, prayer and education. And also, often very prominent social welfare projects working in, and alongside, the community. All of which demonstrate public benefit. Those religious charities which need some care will be those with narrow objects with restrictions on entry and little or no activity within the community. It has been suggested that does a monastery or similar offer public benefit? The answer probably lies that if a time is set aside for prayer and contemplation, and prayer specifically for the community and the town and the nation, then this demonstrates public benefit.

One of the other issues which is specific to religious charities will be membership and I come to this a little later in the podcast.

Religious charities can be unincorporated associations, incorporated charitable companies and can use CIOs, Charitable Incorporated Organisations, as and when these become available for use. In the past, most religious charities will have been unincorporated organisations. Many of the mainline churches, Baptist, Methodist, Church of England, will be regarded as such, although many would have Trust Deeds relating to the property and would have been registered under the Places of Worship Act. This is no longer sufficient, therefore necessitating these churches to register with the Charity Commission, if their income is over £100,000 per annum.

What has happened is that the mainline churches, Baptist, Methodist, Church of England etc. have, in liaison with the Charity Commission, agreed standard model trust deeds, which these individual member churches can adopt, making registration that much easier. The Church of England would refer to parochial church councils, Methodists refer to circuit stewards, Baptists to elders and deacons, these being the trustees along with usually the minister in charge. This concept that the minister is a trustee, albeit also a paid pastor is necessary because they are involved in the day to day administration, governance and work of the church. This is more particularly so of course with the smaller church where there is just the one minister and perhaps a few members of either the parochial church council or elders or deacons, who lead and run the church between them. Whether the treasurers of these churches, religious organisations etc. are officially appointed trustees probably does not matter; they will be regarded as a trustee in law because they are involved in the governance and therefore it would be far better if they were officially appointed.

It is, of course, important when dealing with trust deeds, memorandum and articles of association for churches, that it is written into the document that the paid trustees or other ministers, and represent in minority the number the trustees or leaders of the church, they would have to absent themselves from meetings dealing with salaries and HR issues. I have been involved in a number of registrations of these churches with the Charity Commission over the last two years.

What does concern me is that many will just have registered with the Charity Commission using the model trust document. This can, and perhaps does, say that there are trustees but the members of the charity would be the members of the church. This can cause particular problems in relation to quorum, proxy votes and the governance of the charity. Sometimes model documents are not sufficient. As some churches, particularly the larger independent churches, would have particular clauses necessary to be written into the documents in relation to membership, qualification, baptism, whether it is by full emersion in water or the traditional Church of England way. Some churches would have particular theological issues which they would want incorporated into their trust deed. Some would not agree with the concept of female ministers, and I have seen this actually written into the documents. Indeed, the constitution can become very lengthy and cumbersome, almost impossible to operate on a day to day basis.

Further issue is whether these charities would be far better constituted as a company limited by guarantee, thus giving much better limited liability protection to the trustees, setting up a legal entity which would enable it to borrow money much more easily and indeed to buy property. If they were to use an unincorporated charity, the property would have to be bought in the name of the trustees and borrowing would have to be in the name of the trustees also. It is now understood that the new concept of Charitable Incorporated Organisations, CIO, would not address this issue as, although property can be bought, there is no facility for a CIO to offer a debenture or charge over a property in relation to its borrowing.

For some churches there is an issue as to who are the leaders and who are the members. Do the members have ultimate authority, that is, they can hire and fire the leaders. There are theological issues involved here, and some modern house churches take the view that the leaders are not accountable to the membership, but accountable to Almighty God. One way to deal with all this is to utilise a company limited by guarantee where the members are the elders, leaders, of the church. They can also be trustees, but you bring in other, unpaid, trustees from within the church to help in the legal and fiscal management. Therefore ultimate authority and control lies with the members, the elders or leaders, as they can usually hire and fire trustees. This form of governance may sit much more easily with their theological views.

Another way I have dealt with the issue of membership and the complex constitutional document is to form a company limited by guarantee; keeping it simple, with clauses that the trustees, who are the members, are appointed by the constitution of the church. Therefore, in these circumstances, the religious charity has a separate constitution ranking below the main trust deed, memorandum and articles of association. Therefore it is possible to put lots of clauses into the church constitution relating to qualification for membership, Baptism, appointment of ministers, day to day running and this can be updated from time to time by the members in a church meeting, as distinct from the members of the holding company, if I can use that expression. The church constitution then appoints ministers, elders, deacons, parochial church council or whatever, and will state who would be regarded as the trustees; perhaps more costly and complex to set up in the first instance but much more workable as the church/charity goes forward.

I hope you have found this podcast interesting.