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CHAMBERS

Charity Disputes

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“Legal action can present significant risk to a charity’s beneficiaries, assets and reputation” (CC 38, para 1.2)

- Starting
- Ending
- Paying

The need for permission

- Section 115(2) of the Charities Act 2011:
“Subject to the following provisions of this section, no charity proceedings relating to a charity are to be entertained or proceeded with in any court unless the taking of the proceedings is authorised by order of the Commission.”
- If not, stay the claim

- Clearly outside the definition
 - contractual and property disputes with third parties; most employment disputes
 - disputes as to whether something is a charity
- Clearly within the definition
 - claims for breach of trust; schemes; claims seeking directions for trustees (inc Beddoe applications)

The exceptions

- Interim injunction applications?
 - *Choudhury v Stepney Shahjalal Mosque and Cultural Centre Ltd* [2015] EWHC 743 (Ch)
- Appeal or “pending cause or matter”
 - Section 115(4)
- Proceedings otherwise than in court
 - Tribunal: charity; tax; property chamber?



Permission from Commission (1)

CC38 Charities and Litigation paragraph 4.3:

- a formal request
- a copy claim form/defence
- legal opinion (merits, also perhaps standing)
- costs estimate
- the value of assets involved
- information about charity's finances
- an evaluation of benefits and risks
- the prospects of mediation/compromise



Permission from Commission (2)

- You can expect:
 - Information (especially privileged information) to be treated as confidential and exempt from FOI requests
 - The Commission to engage with the other side
 - To wait about 8-10 weeks in standard case for a response
 - A “No” or a “Not yet” in most cases
 - An exhortation to mediate

Possible responses to a refusal:

- Mediate (if other side amenable)
- Apply to Court
- Seek confirmation that fresh application may be made if some alternative course doesn't bear fruit

Permission from Court (1)

Section 115(5)

“Where subsections (1) to (4) require the taking of charity proceedings to be authorised by an order of the Commission, the proceedings may nevertheless be entertained or proceeded with if, after the order had been applied for and refused, leave to take the proceedings was obtained from one of the judges of the High Court attached to the Chancery Division.”



Permission from Court (2)

CPR 64.6

- Part 8 claim within 21 days of refusal
- Commission as Defendant
- Conventional to join A-G too
- No need to serve any party formally
- Exhibit Commission refusal letter
- Judge grants on paper or directs hearing (Master or Judge? Chancery Guide para 29.22)

Permission from Court (3)

Rai v Charity Commission for England & Wales
[2012] EWHC 1111 (Ch)

- Court is exercising its own unfettered jurisdiction (not an appeal)
- Necessary (but not sufficient) condition that claim is legally sustainable.
- Policy of section 115 is to prevent charity resources being squandered on internal disputes.
- Focus should be on whether litigation is “least worst” course

Permission from Court (4)

- Commission's refusal is part of evidence and to be treated with the proper level of respect.
- All the material submitted to the Commission should be presented to the Court.
- *Ex parte* in first instance (full and frank disclosure) but could be adjourned to be heard *inter partes* if in doubt.
- If D has intimated "knock out" point should be *inter partes*
- Not a "dress rehearsal" for substantive claim.

Court's assessment:

- Properly pleaded?
- Proper parties?
- Issue of real substance?
- Claim brought in good faith?
- Prospects of ADR?
- Costs estimates
- Assets of charity
- Human rights engaged?

- Permission might be limited to a procedural stage
- More common in Part 7 claims (where disclosure may be more important)
- Part 8 claims: much cost already incurred by time of application

Challenging Permission?

- Filter to weed out weak, poorly-prepared, not-in-best-interests-of-charity claims
- Not an additional procedural stage to argue over
- Revoking permission rare except in cases of fraud, serious misrepresentation

- Decision-making: ensure proceedings authorised properly
- Revisit ADR after grant of permission
- Costs protection (section 110; *Beddoe* relief)

- Mediation
- Arbitration
- Early neutral evaluation
- Judgment

- Not limited to powers of Court: can facilitate wider settlement
- Several mediations not uncommon
- Often require Commission to exercise powers to implement result
- Timing is key
- Can be more costly than Court determination of discrete issue

- Typically confidential
- More common in religious disputes
- Sometimes imposed under constitution



Early neutral evaluation

- Rough and ready judicial ruling
- Without prejudice
- Confidential

- Public ruling
- Higher chance of “winner takes all”
- Further costs of enforcement
- Need to work together subsequently

- Up-front costs protection (section 110; *Beddoe* relief)
- Costs-capping Order
- Costs budgeting
- Re Buckton [1907] 2 Ch 406 categories
- Costs of Attorney-General