

# SocialEconomy

A quarterly bulletin of information for charities,  
voluntary organisations and social enterprises

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## Charities...

# Charities, Children and Wills – a cause for concern?



Heather Illott was ruled out of her estranged mother's Will, who bequeathed her entire £486,000 fortune to animal charities Blue Cross, RSPCA and RSPB. After her mother's death, she challenged the Will

claiming 'reasonable provision' from her mother's estate. In 2007 Illott took proceedings under the Inheritance (Provisions for Family and Dependents) Act 1975 seeking a share of the estate. She was awarded by the

district judge, what he considered to be reasonable maintenance in all the circumstances, a sum of £50,000. The Appellant attempted to appeal against the amount but the High Court allowed a cross appeal from the Charities and dismissed the Appellant's claim.

The Court of Appeal supported the district judge's decisions and held that the judge was entitled to find that the absence of provision for the Appellant was unreasonable. This was despite the fact that Mrs Jackson, the Appellant's mother, left a detailed letter for her executors explaining her decision to exclude her estranged daughter from her Will. The Court of Appeal also held that in order to succeed with a claim under the Act, there

was no need for an adult child to show the deceased owed them a "moral obligation".

The judgement is cause for concern for charities who may worry that it will encourage legal challenges from adult children who, for whatever reasons have been left out of their parent's Will. The principle that you can leave your estate to whoever you like has been undermined in this decision by the Court of Appeal. In an attempt to increase her award, Illott has won leave to make a further appeal against the amount of the award in the High Court. In light of this ruling it is likely a number of similar cases will occur and the question whether there is a need to draft Wills differently arises.

## Employer Benevolent Funds – The Tribunal awaits

November 14-17 are the dates when the Charity Tribunal hearings on employer benevolent funds will be heard in London. This reference by the Attorney General is to examine if the Charities Act 2006 amended the law on public benefit relating to

charities which relieve poverty but have a nexus to a particular employer. The reference will also encompass charities among the poor members of a profession or other unincorporated associations and charities for poor relations (which are very seldom seen).

The outcome will be either the law has not changed or that it has. If the law has changed and the charity was set up before 1 April 2008 then the charity continues but the funds must be applied for similar wider purposes (cy-pres). If the charity was set up after 1 April

2008 it will cease to be charitable. We will report the outcome in Social Economy. It should be noted the judgement in the public benefit case before the Charity Tribunal on independent schools has not yet been given.

### Exempt and Excepted Charities – New Guidance

The Charity Commission has issued further detailed new guidance on exempt and excepted charities and the process by which such charities will move either towards regulation by the Charity Commission (as has happened for example with parochial church councils)

or will maintain their own regulator (universities). This is a gradual process to have the same type of regime applicable to all charities. 'Changes to the regulation of exempt and excepted charities' can be found at: [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk).

### Filing Charity Accounts on time?

Would you drink and drive? Your answer now may be different from the answer you would have given twenty years ago as there has been a shift in the cultural attitude towards driving whilst under the influence of alcohol. Sam Younger, Chief Executive of the Charity Commission, is seeking

a similar cultural shift in the attitude towards late filing of documents with the Charity Commission. Although not suggesting that late filing is as dangerous as drink driving, Sam Younger does make the point that accountability is essential for Charities.



## Financing Early Intervention in neglected children: The Next Steps

Graham Allen's simple message about the urgent need to invest in neglected children to improve their lives and avoid future costs to society has received the emphatic support of the leaders of all three main political parties. The Labour MP for Nottingham North now has what he believes to be a coalition of the willing coming forward to finance Early Intervention. His report focuses on how to finance an expansion of Early Intervention through better use of public resources and alternative routes to attract additional investment.

The enthusiasm and potential for Early Intervention has

already persuaded government departments that Early Interventions should be at the heart of Community Budgets. Local agencies are the key factors in the scheme as it is usually them who will pull together the evidence based policies to create a local Early Intervention package appropriate to their area. Working together with the Government Early Investment places can lead the culture change necessary to help all areas of the public sector bodies realise the value of their investment.

In order to encourage social investment a number of evidence based polices and programmes

are needed to help set up outcome-based contracts which enable agencies to contract on a payment-by-result basis, to drive better delivery and to prevent the waste of billions of pounds on late intervention. In a bid to engage funders from the private, local government and charity sectors, the Prime Minister has been asked to offer a bold challenge, that if an Early Intervention Foundation is created to drive progress from outside Whitehall, the Government will support it with co-funding. Expert financial groups have also been looking at different models of funding Early Intervention, with long term scope for providers to pioneer Junior Individual Savings Accounts

(ISA) that would link investment to their own children, over the long period needed for payback on Early Intervention. Investment banks have also indicated their enthusiasm to raise a £100 million early investment bond.

It will be interesting to see if this financial model, which was applied by the last Government to immunisation of children overseas through GAVI, (Global alliance for Vaccination and Immunisation) can be applied within the U.K.

Graham Allen's report Early Intervention: The Next Steps can be found at [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

### Lord Hoffman: Unshackling Good Neighbours

**A Report of the Task Force established to consider how to cut red tape for small charities, voluntary organisations and social enterprises has been issued.**

Rolling back the red tape is not as easy as it sounds, however a number of problems caused by red tape deterring volunteers have been highlighted in the report by the Task Force that need to be addressed:

- An aspect of the red tape 'band wagon' involves the tendency for regulators to get involved in regulations that are not directly their concern which tends to undermine the confidence of small organisations who are repeatedly asked over and over again about regulatory compliance. (The Charity Commission and Safeguarding Children springs to mind).
- An added regulatory burden is created by a blurring of the lines between regulation and guidance leaving those seeking advice confused about whether a legal requirement exists.
- There seems to be a variable understanding amongst the public of what constitutes an acceptable level of "risk" and a confusion concerning "transferred risk".

In order to deal with these problems, the Task Force sets out key recommendations including reforms, the elimination of regulatory duplication, the establishment of a working party, the encouragement of fundraising and the display of posters in all Job Centres encouraging volunteers.

Unshackling Good Neighbours can be found at:  
[www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

## Social Enterprise...

### Social Enterprise in Health Care – The King’s Fund

**The King’s Fund is not a stranger to social enterprise in the health sector, having published research on it in 2006 in respect of community and primary care. The 2011 offering is entitled Social Enterprise in Health Care and concerns promoting organisational autonomy and staff engagement.**

It finds that providers are beginning to recognise that

greater autonomy gives greater scope to innovate and permits more staff involvement in decision making. Difficulties arise for such enterprises with short term contracts and the competitive market in which such enterprises are launched.

Longer term contracts together with relevant business support are required for these new social enterprises to achieve long term sustainability and focus on the

viability of the service in the long term.

It will be interesting to see the Government experiment with employee involvement within the statutory corporations which are the legal form of NHS Trusts, probation services and local government rather than leave it until they reach the private sector.

[www.kingsfund.org.uk](http://www.kingsfund.org.uk)



## Social Investment...

### Twenty Catalytic Investments to grow the Social Investment Market

**The Big Society Finance Fund set up by NESTA in 2010, has been undertaking research to demonstrate the role the Big Society Bank could play in the future. The research has included data on the demand for capital – undertaken by New Philanthropy Capital – and the appetite for social investment products among individual investors (conducted by the FairBanking Foundation with IPSOS Mori). The research**

**suggests potential to grow the supply of capital for social ventures substantially.**

Examples are provided of how small sums of catalytic funding deployed in innovative ways can leverage much larger sums to help social ventures grow. However, social investment is still an emerging market, and although Big Society Capital is placed to be an institution to ensure capital is

available to social ventures, it has been suggested that there may be difficulties in meeting the needs of the market because of the low rates of return achievable.

The outcome of the research resulted in the submission of 20 pilot projects to the Big Society Finance Fund for investment. Summaries of the pilot projects can be found in part 2 of the document. It is believed that within

the portfolio of these 20 projects there is at least £12 million of investment that could be made, and in six months this would catalyse to at least five times the sum in additional investment. All three research reports are available from Nesta.

[www.nesta.org.uk](http://www.nesta.org.uk)

## Social investment for the future

If the kind of financing referred to by Graham Allen for Early Intervention on page 2 seems far fetched, then the Cabinet Office will launch a new £10m fund in April 2012 designed to help voluntary sector organisations

prepare for these new types of social finance; The Investment and Contract Readiness Fund.

Meanwhile in the City of London, the City view is given by "Investor Perspectives on Social Enterprise

Funding" written by Katie Hill and Rod Schwatz of Clearly So for the City of London Corporation, the City Bridge Trust and the Big Lottery Fund. This encyclopaedic publication starts by profiling what makes up the world of finance

in London; it considers different vehicles and products for social investment and leads on to what Big Society Capital might do. [www.clearlyso.com](http://www.clearlyso.com)

# Employment...

## Tendering for Services – more flexibility?

The Coalition government is examining whether the UK has been too generous in applying the EU Acquired Rights Directive through the TUPE Regulations 2006.

In most cases an organisation tendering for services has little choice but to accept a TUPE transfer of the staff previously employed in the service. This is because of the special "service provision change" rules particular to the UK. But a new case suggests that TUPE will not apply in every case, for example where the service is reconfigured. In Nottinghamshire Healthcare NHS Trust v Hamshaw and others

(EAT/0037/11), the Employment Appeal Tribunal (EAT) held that there cannot be a relevant transfer under TUPE, either by way of a traditional transfer of an undertaking, or a service provision change, where the services provided to a client are not fundamentally or essentially the same as they were before the change of provider.

In this case, Nottinghamshire Healthcare NHS Trust ran a care home. This was then closed and residents re-housed into homes of their own. Their care was transferred to two new independent providers. A number

of care workers in the former home were offered jobs with the new providers. The Trust considered TUPE applied. The providers said it did not.

The EAT (upholding the employment tribunal decision) held there was no TUPE transfer. There was neither a transfer of an economic entity retaining its identity (reg (3)(1)(a)) nor a service provision change (reg (3)(1)(b)). Under the new arrangements former residents were to live in their own flat. The care provided was different. The individual care user was to be helped autonomously to

undertake domestic tasks and all the paraphernalia of a fully staffed care home was not available. The economic entity had lost its identity. And even the seemingly wider definition of a relevant transfer by way of service provision change could not apply where the activity carried on by the new provider was not "fundamentally" or "essentially" the same as the service provided before the change.

This decision may be of some assistance to social enterprises tendering for public sector contracts pending any change to the wording of TUPE itself.

## Legal representation at disciplinary hearings

Employees have a statutory right to be accompanied at disciplinary hearings by a work colleague or a union representative, but are they entitled to legal representation instead? Generally the

answer to this question is "no". Most employers see the involvement of lawyers in internal disciplinary matters as something to be avoided on the grounds of delay and expense.

However, public bodies may have to bear in mind Article 6 of the European Convention on Human Rights (the "Convention") which concerns the right to a fair trial. The Human Rights Act 1998, which gives effect in the UK to most Convention rights states it is unlawful for a public authority to act in a way that is incompatible with the Convention. If Article 6 is engaged, a fair trial would include a right to legal representation.

Article 6 is engaged where the disciplinary proceedings will have a substantial influence or effect on an employee's right to practise their profession. This has given rise to a number of cases in the courts.

In the recent Supreme Court decision in R v Governors of X School, concerning a school assistant dismissed for inappropriate sexual behaviour, the Court found there was no evidence to suggest that the Independent Safeguarding Authority would be influenced profoundly by the school's assessment of the facts and Article 6 (and the right to legal representation) did not apply to the internal school proceedings. This limits the right to legal representation to proceedings which are in effect determinative of the issues relating to the right to practise a profession.



# Local Government...



## Planning Localism before the New Local Government Act Powers

**The villagers of Menston in West Yorkshire have sent an “unequivocal message” to the council and to the developers in a recent campaign initiated by the Menston Action Group against the construction of around 300 homes on green fields at the edge of the village.**

As highlighted previously in Social Economy, the Localism Bill intends to give persons engaged in community development a chance to voice concerns and opinions by way of referenda on local land use development with potentially a right to acquire property. This latter power is clearly a concern

to land owners but was brought about to give encouragement to local persons seeking to save local community facilities.

Villagers in Menston recently found they could exercise a powerful voice against plans to build three hundred homes on the edge of their village. Schedule 12, Part III, paragraph 18 of the 1972 Local Government Act enables members of a parish to call for a referendum so long as the poll is demanded by no less than ten, or one-third of the local government electors (whichever is the lesser) present at a parish meeting. Six local government electors were sufficient

to call for a parish meeting at which a referendum on the matter could then be requested.

1,760 of the 1,790 local government electors who turned out urged the City of Bradford Metropolitan District Council not to accept the plans for the new homes. Although there is a clear majority, this does not necessarily mean the local authority will automatically follow with actions as a result of the referendum. However this has clearly sparked others to consider if they could use the power to equivalent effect.

# Mutuals...

## Sharing Ownership: The Role of Employee Ownership in Public Service Delivery

**The All Party Parliamentary Group on Employee Ownership launched an inquiry looking at how the implementation of employee ownership structures could impact on the delivery of public services. The Group's Chair Jesse Norman explained the rationale for the inquiry, stating that if more opportunities are delivered by the government, it will be important for frontline workers to take greater control over how they deliver services.**

In a previous report, the group concluded that the co-owned model offers enormous potential for the UK economy, finding that co-owned firms appeared adept at managing innovation and change, were underpinned by high levels of productive employee engagement and delivered an excellent track record in delivering social, environmental and community benefits.

The Group found that the Government's public service

mutuals programme is an important step forward in creating new options for public service delivery. However, the public service mutuals programme is not yet very well understood within government and would benefit from more explanation, exhortation and guidance from ministers. It has also been made clear that cost cutting alone should not be the prime motivator for seeking out mutual ownership models.

Despite the obstacle represented by EU procurement rules, the evidence from the hearings was that with the right guidance, encouragement and direction, new employee mutuals can compete fairly and successfully with conventional and larger companies. It is also noted that the Cabinet Office should initiate a study on the funding and conditions required for employee mutuals to achieve significant growth, as it will be an important

mile stone for this initiative when a new generation of genuinely sizable mutuals emerge.

The report surprisingly did not address the need for the Department of Business to become the Ministry for Mutuals in place of HM Treasury, but perhaps that may come out in future work of the committee. The All Party Parliamentary Group report can be found at [www.employeeownership.co.uk](http://www.employeeownership.co.uk)





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## Time to get serious: International lessons for developing public service mutuals

**After the Government's prediction that as many one million people, one in six public sector employees, could be working in new mutual enterprises delivering public services by 2015, Co-operatives UK commissioned a paper to look at international experience of public service delivery by co-operatives.**

The report shows that the UK policy context does not emerge particularly well from the comparison of the key ingredients of success methods used by co-operatives in Spain, Italy, and Sweden. However, it is believed that there is sufficient scope

to accelerate action and tackle obstacles that may arise, especially by looking at the experience from other countries to provide a starting point.

It is highlighted that an exploration of the potential to develop rapid and effective consortia-based models of growth is needed in the UK. Along side this, there should also be a funded programme of high quality specialist business support on offer to all would-be public service mutuals, and it is believed that a review of sources of finance for public service mutuals will also need to be done in the UK.

The examples of Spain, Italy and Sweden outlined in the report show that in different contexts, the co-operative model can provide an effective and empowering mechanism for delivering public services where service users, employees and the wider community can have direct control of how services are delivered. It is likely that the UK co-operatives will be developed from these models whilst still in their early stages and will hopefully have the same success.

The Co-operatives UK report can be found at [www.uk.coop](http://www.uk.coop).