

## Clairvoyance

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The case of the Spiritualist Association of Great Britain is a cautionary tale highlighting the pitfalls that lie in the path not only of charities unused to transacting property but also charities that encounter situations out of the ordinary.

The charity in question needed to sell its property in London's Belgrave Square. It did so for £6million: a price that failed to take account of the potential uplift in value if there were change of use. Immediately after acquisition, the buyer sold on for £21million. Not surprisingly, questions were asked as to whether the charity trustees had complied with the requirements of the Charities Act to obtain a report from an independent surveyor confirming that the disposal was on the best terms reasonably obtainable.

In fact, a Charity Commission inquiry was triggered. The findings are a litany of errors:

- the charity failed to obtain the necessary statutory valuation report;
- the solicitor instructed was 'not a specialist in charity law';
- the charity contracted with a worthless 'shell' company;
- consequently an initial contract to sell for £8 million was purportedly rescinded and a new contract exchanged to sell for £6 million;
- an application to the Commission for consent to rescind failed to tell the whole story;
- without taking the required advice, the charity entered into a binding 'lock-out' agreement;
- the surveyor appointed lacked the qualification required by the Act;
- the report did not deal with all the matters required by the statutory regulations;
- the charity failed to impose appropriate conditions on the buyer for the payment of 'overage';
- it also failed to carry out appropriate diligence on the buying entity.

The lesson is that there are many things to consider when selling a high value asset and trustees should always remember that they may incur personal liability if they fail in their duty *'to act with reasonable diligence and to conduct the charity's affairs in the same manner as an ordinary prudent man of business would conduct his own affairs 'save that he must consider that he is acting for the benefit of the charity's objects which usually excludes speculative transactions which he might occasionally make for himself'* (from a judgement of the First Tier Tribunal (Charity)).

As the Commission concluded: *'Understanding how to extract the best value out of such assets is a complex and specialist issue so choosing the right professional advisers with the necessary expertise and qualifications to provide pertinent high quality advice in such circumstances is a vital element of a trustee's role.'*

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