

# Playground complaints

**THE CHARITY TRIBUNAL** has ruled on what issues it can and can't look at for the hearing of the appeal between *Derek Maidment and Lennox Ryan v The Charity Commission*.

Back in 1903 Charles Newman Kidd gave Dartford Council some land which he set up in charitable trusts as a recreation ground, (the 'Kidd Legacy'). The council now acts as the charity's trustee and the land could not be sold under the terms of the trust because it was designated for recreation. However, the council sold a piece of the land to St James' Investments on 4 June 2004, breaching the trust. The Charity Commission has accepted this was a genuine mistake and the council did not fully understand the implications of the trust deed. Since then, the council has negotiated with the regulator for a scheme to rectify matters. The proceeds of a sale would be used to purchase an area of replacement land within the park and the remaining funds (£270,000) will be held on trust as a permanent endowment. The Commission's involvement was required because:

- The council is using funds held as charity trustee to purchase land it holds in its capacity as local authority. As this involves self-dealing, the Commission's consent is required (under s. 26 Charities Act 1993) or the transaction would be void.
- Only part of the proceeds of sale would be required to purchase the replacement land. The remaining funds will be invested to produce an income for the charity. However, holding part of the charity's endowment as investments rather than land is a change to the charity's trusts – the land becomes the charity's income-producing property and would not be entirely used for its original purposes. This alteration can only be made by the proposed scheme and even then it can only be made if there are circumstances which would allow the property to be applied cy-près (s.13 Charities Act 1993).

The effect of the scheme was confirmed in the Commission's final internal review although the summary of this on the Commission's website suggests that the purposes of the charity and the terms on which the property was held

[www.charitiesdirect.com/caritas-magazine](http://www.charitiesdirect.com/caritas-magazine)

were not altered by the scheme. The Commission gave public notice of its intention to make the scheme. A large number of representations were received against the proposals and the underlying issue is whether the scheme putting into effect the compensation offered by the local authority adequately compensates the charity for the breach of trust which has arisen.

As well as posing additional issues that the parties didn't raise, such as whether the scheme could be a mechanism for the management of conflict of interest issues (see para. 4.6 of the ruling), the Charity Tribunal has stated it will decide on the issue outlined in para 4.5<sup>1</sup>.

The focus is all about the significance of the words 'in perpetuity' in the deed of gift and whether the council as the trustee has the power to change the land's use.

Moira Protani, head of charities at Wilsons commented:

'There is insufficient evidence to comment on the merits of this case although we have some sympathy for the Charity Commission's position. Ultimately, if there was a finding of bad faith, this may result in the land being returned to public use which is presumably what the appellants want to achieve.

'This is an uphill struggle and there are a number of hurdles, namely, a finding by the Charity Tribunal (or on appeal) that the Commission wrongly concluded that the local authority did not act in bad faith followed by a quashing of the scheme; a new finding by the Charity Commission that there was bad faith followed by legal action, new trustees, the Charity Commission or the Attorney General to recover the land from the purchaser. And all of this assumes that there was in fact no power to dispose of the land and that the best interests of the charity would be served by recovering it.

'Following the Oldham case, the concept of land being held in perpetuity is interpreted very restrictively. The Commission's approach appears to have been pragmatic and took account of the overall benefit to the charity and the public. After all, the purpose of the original gift was not the preservation of the land in question. The only practical way to frustrate a donee who wants to dispose of land given to it is to provide for an automatic

## Financial indicator

### Job losses put pressure on charities

**THE BANK OF ENGLAND** has suggested that the UK economic recovery, after an initial bounce over the next few months, will be a long, slow slog, with the pace of the upturn held back by persistent structural problems such as credit shortages, frail banks, sticky unemployment and cuts in government spending.

A particular worry in this environment is unemployment which is likely to rise to 10 per cent of the workforce and then reduce only very slowly because of the insipid pace of growth.

Already there are population cohorts and regions which are suffering disproportionately, 28.6 per cent of 16/17 year-olds are without employment and the North East and West Midlands have been hit hard by job losses.

This is an environment where regional and sector charities are going to experience expanded requests for support over an extended period at a time when revenue flows – from donors, government and investment is under pressure.

A review of investment policy would be prudent against this backdrop to examine the extent to which strategy adjustments can ease cash flow pressures.

*John Kelly is head of client investment at CCLA*

gift of the land to another charity if it no longer wishes to use the land for the purpose for which it was given.'

1. [www.charitytribunals.gov.uk/decisions.htm](http://www.charitytribunals.gov.uk/decisions.htm)