

Managing charity property in uncertain times – Q&A Responses

If you have any further questions about the webinar content or responses provided, please contact the quoted partner using the details below:

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Question

Answer

Can you ask another Charity with similar objectives to use your property? They can take full responsibility for care of property and insurance cover, say for a period of 10 years. Naturally you will have a legal lease with all aspects covered.

Yes - if the two charities have compatible charitable objects then the Charities Act allows for any lease arrangement to be on less than best terms (i.e. the landlord charity does not have to charge the tenant charity a market rent). The key point is checking that the objects of both charities are compatible.

Kathryn Williams, Stone King

Can you gift a property to a charity with similar objectives for say a period of 10 years? Original charity retaining ownership but not receiving rent or remuneration as you are giving benefit to the wider community i.e. safe houses for trafficked victims.

Yes - if the two charities have compatible objects then the Charities Act allows one charity to gift a property to another charity (the key point is checking that the objects of both charities are compatible). If the disposing charity is expecting the property back after 10 years then you would need some sort of mechanism of ensuring this happens (i.e. a reverter clause) - these types of clauses can be tricky so it is normally easier to lease the property for a term of 10 years on a peppercorn rent (if you want to gift it).

Kathryn Williams, Stone King

Neighbours have asked if they can walk around our property convent grounds shared with a school which is an academy during lockdown. What do we have to think about?

We would recommend that any arrangement is properly documented so as to ensure that the terms of use are clear to each party and to ensure that the neighbours do not acquire any legal rights over your property. We would also recommend that you

	<p>consider getting sign off from the Academy if they also use the land (as they will have their own safeguarding requirements). In terms of considerations we anticipate you would control over: the hours of use (i.e. are there hours where you wouldn't be happy for neighbours to use the gardens e.g. after 7pm); what can be done on your property (is it just walking - what about games, picnics etc.); the ability to stop the arrangement (for example if the academy started back and wanted to use the property and due to safeguarding this couldn't be handled or you just wanted to stop the arrangement because it wasn't convenient) - all these types of points could be included in a document with the relevant neighbours.</p> <p>Kathryn Williams, Stone King</p>
<p>Should charities if they are tenants pay their rent or seek a cash flow advantage by asking a rent holiday?</p>	<p>Yes. Trustees are obliged to act in the best interests of their charity so this would extend to requesting a rent holiday - the landlord may ask for evidence as to why the rent should be waived/ reduced etc. so charities should have answers to back this up (e.g. be able to demonstrate a drop in income).</p> <p>Kathryn Williams, Stone King</p> <p>If the landlord refuses a rental holiday it may be worth asking for a deferral of rent if this would assist cash flow always remembering that the rent will have to be paid at a future date.</p> <p>Amanda Francis, Buzzacott</p>
<p>Do we think office space rent will go up or down given that we are seeing more remote working / but hot-desking being ruled out, which way will it go?</p>	<p>Some analysts expect that office rents for good quality office accommodation in prime locations could reduce by 10% to 20% over the next 12 months as companies rethink their property needs, albeit this is based on sentiment and we have yet to see reductions filter through. We have seen investment banks in the last few days predict -27% for West end offices and -23%</p>

for City, but again these are not based on evidence. The pandemic is expected to fundamentally affect the supply-and-demand dynamics for office space in the long term as occupiers seek more flexible remote working arrangements but taking London for example, pre-COVID it had the lowest vacant rate for offices for some years with strong underlying fundamentals. An evolving impact from the lockdown has been that tenants with the ability to work from home have been able to maintain business continuity where possible, notwithstanding the broader impacts of on each individual business. Landlords negotiating new leases are considering more flexible approaches, including shorter leases with more rent frees, in order to secure occupancy and maintain headline rents.

Paul Greenwood, Gerald Eve

Do we think development values will drop if we see a drop in the residential market when furlough / mortgage holidays come to an end?

Residential development land values in prime locations are expected to remain relatively resilient as developers agreeing terms to acquire sites now will be expecting to build out projects over the next 2 to 3 years by which time the residential market is expected to be recovering from the effects of the pandemic. However, some softening of resale prices, increases in build costs, higher costs of finance and protracted sales periods would be expected to negatively impact upon land pricing, especially for sub-prime sites. Developers appear to be being more cautious but sentiment towards buying residential development land remains fairly positive. This is a market to monitor going forward.

Paul Greenwood, Gerald Eve

Do we think the tenant protections will be extended beyond end of June?

Possibly - it will depend on how the lockdown measures progress. If the Government starts to allow more businesses to operate then the argument that rent cannot be paid is going to be weaker. That said,

	<p>no matter what the law says, landlords may be cautious about bringing enforcement action for non-payment of rent as they may not want an empty property back which might be difficult to re-let (which will incur further costs e.g. rates, security etc.).</p> <p>Amanda Francis, Buzzacott</p>
<p>Do we anticipate seeing a change in where people will want to live?</p>	<p>It is expected that there could be further urban dispersal of people moving to smaller towns and polycentric cities, with increased demand for areas that promote health and wellbeing as people seek accommodation with outside space. Within city centre locations it is expected that homeowners will require higher space standards and amenities as owners and renters in lower quality properties, forced to self-isolate and face their accommodation's inadequacies, demand more from it in the future.</p> <p>Paul Greenwood, Gerald Eve</p>
<p>Do we think that we will see virtual surveyor inspections in the short term?</p>	<p>We hope not! We expect that in the short term virtual inspections of commercial property may be carried out for marketing purposes. However, where physical inspections are required for building surveys or valuation purposes internal and external physical inspections of vacant unoccupied property we expect will be allowed to be carried out, in accordance with the government's social distancing requirements when the RICS publish their policy on property inspections within the next 24 hours. We do not consider there is a complete substitute for physical inspection, but a complimentary service is likely to remain with us going forward. Inspections of occupied properties in the short term will be more challenging and policies are being considered by the RICS to manage this safely and effectively.</p> <p>Paul Greenwood, Gerald Eve</p>

If we rent to beneficiaries should we offer reduced rent, do we need to think of charitable objects etc.?

The trustees have to look after their own charity first, so a charity should not make unprompted offers of rent reductions or holidays to a beneficiary. If a charity becomes aware that a beneficiary is struggling then they can agree to a rent holiday or rent reduction as that beneficiary will fall within their charitable objects. However, the charity is not obliged to do this (it remains at the trustees' discretion). It is always important to check that someone (be it an individual or corporate entity) is a beneficiary of the charity. If the charity rents property to several beneficiaries, there is a need to ensure that it can justify different approaches to different beneficiaries.

Kathryn Williams, Stone King

Are we better to rent surplus property and hope values come up, or sell and avoid issues of renting?

If the property is large or complex and will take time to market then it is certainly worth considering a short term tenancy whilst the preparations for sale (including potential discussions with local authority planning departments and marketing agencies, legal and environmental searches, etc.) are taking place. Discussions with local authorities over planning potential, for example, can take many months. Temporary tenants would ensure the property was occupied and reduce the cost of security, rates etc. It is important that any short term tenancy is covered by a formal lease to protect the charity. If the property to be sold is a small and/or straight forward such as a residential house, then you would be advised to talk to your property advisers and local agents as it may still be sensible to dispose of it now but this will depend very much on its location and condition.

Amanda Francis, Buzzacott

Should we be revaluing all our properties for the audit and, can this just be desktop or done remotely etc.?

If the properties are occupied and used by the charity and have always been included on your balance sheet at cost or deemed cost then there is normally no need

to revalue them for audit or accounts purposes. They may continue to be shown on your balance sheet at cost. On the other hand, if for whatever reason you include such properties on your balance sheet at market value or the properties are classified as investment properties within your accounts then there will be a need to revalue them regularly and particularly at times where it is likely that the value will have changed. If your property advisers have full details of your properties then this may be possible using a desktop methodology. However, if your property advisers need to visit the properties in question then this may need to wait until lockdown restrictions have been relaxed. It is important to discuss this matter at an early stage with your auditor to ensure that it is clear what actions need to be taken and the impact, if any, on your audit timetable and report.

Amanda Francis, Buzzacott

Do we think there will be any increased interest from the private sector in purchasing care homes from operators that want to move out of the market?

In the short term we expect to see opportunistic investors in the private sector and operators keen to acquire care homes, sensing an opportunity, but as yet, we are seeing limited distress on the sell-side. We expect that there may also be opportunities for religious orders or charities who own or operate trading care homes, who have an operational need or identifiable demand, to merge or acquire assets from operators who are trading at a deficit at marginally reduced levels. We do expect more demand for modern, future proofed homes which benefit from the economies of scale and we will likely see older homes which do not meet the minimum care standards (room size, en-suites, and communal space) close. The demographics of the area, ability to attract private fee payers, local competition and the quality

	<p>of homes will become even more paramount to private buyers.</p> <p>Paul Greenwood, Gerald Eve</p>
<p>If we wanted to run a trading subsidiary to run a social enterprise as a joint venture with a third party such as a local authority does that raise any issues, can we jointly own the trading subsidiary with another?</p>	<p>There are a quite a few considerations here but the main issues is that subsidiaries that are not under 100% charity ownership and cannot enjoy the same treatment on shedding taxable profits via Gift Aid. So where a local authority or corporate shareholder is involved the company is likely to have to pay corporation tax. Often it is best to have a JV agreement or for more complex cases; a partnership/LLP where the charity can use a 100% trading subsidiary as the representative partner/member.</p> <p>Luke Savvas, Buzzacott</p>
<p>Is there a point of using a trading subsidiary if the activity in question is VATable so that the parent charity does not have to register for VAT, or does it?</p>	<p>It is possible for a charity to undertake what would be a taxable supply for VAT purposes, but there are instances where such an activity is not primary purpose trading and hence a trading subsidiary is required. In such instances, the trading sub would have a compulsory obligation to register for VAT if the level of taxable turnover exceeded the registration threshold. If the parent charity is also VAT registered in its own right, it is worth considering the formation of a VAT group registration for both entities. This reduces administration and ensures any supplies of goods or services between the two entities can be ignored for VAT purposes.</p> <p>Socrates Socratous, Buzzacott</p>
<p>We rent a property to a separate charity that is a school, and they are struggling, should we be thinking about how we can support them, or should we be considering our own financial position?</p>	<p>The trustees have to look after their own charity, so in the first instance the charity needs to protect its own financial position above that of the school. If the charity's financial position is robust then it can, if it wants to (there is no obligation on the trustees to do this), offer support to the school - this can be done in</p>

a number of ways as outlined in the slides. The charity should not be supporting the school at the expense of its own short term or long term financial position and sustainability.

Kathryn Williams, Stone King and Amanda Francis,
Buzzacott
