

## WHAT IS SO DIFFERENT ABOUT NOT FOR PROFIT COMPANIES?

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In the area of corporate responsibility, not-for-profit companies mostly have a stewardship role for members and this does not have different governance implications from business corporations. So why do people choose the entity of not-for-profit organisations to conduct their affairs ?

Not-for-profit organisations have a fundamental difference in its relationship with its company members to the relationship of profit organisations and their company members. Non-for-profit organisations, used mainly to collect money to give aid to developing countries, aid for earthquake crisis situations, aid to the poor and homeless, etc, have members whose commitment to the company is to donate money to the company. These members must exercise rights for the beneficiaries who are helped by the company. This is their stewardship role. On the other hand, for-profit organisations have the interest of the shareholders foremost in priority and consumer interests are only pursued to the extent that these consumer interests are also the same interests of the members of the company. Directors of not-for profit organisations must have some *ultra*

*vires* doctrine with which to constrain them; they do not have the remit to increase shareholders value, as with for-profit organisations; their remit must be to efficiently distribute aid to the most deserving and to pursue fund raising activities to sustain such aid to the needy, for example. Another duty of directors of not-for-profit organisations is prevention of the majority from stopping the company from achieving optimum efficiency. These aims cannot be achieved by for-profit directors because, although efficiency may be considered as an important objective in company contracts, it never suffices and there is a balance between company law interference and the freedom of contract principle.

That directors of not-for-profit companies need constraints is illustrated by incidents of church pastors stealing funds. Theft and fraud are usually dealt with by audit and submission of annual accounts to the Charity Commission but cunning people can hide debts and window dress the accounts in general without raising suspicion, especially in the church sector where morality and truthfulness are implied qualities in associated persons. The Victory Centre in London submitted cessation accounts in 2002 when it was discovered that it had debts of £200,000 even though it had an income of £3,500,000.00 in 2001. The preacher of this church received a salary from a trust of which he is also a trustee, as do many preachers in many churches in England and Wales. The preacher lived a lavish lifestyle which was very much beyond his known means and this led members to ask for an investigation by the Charity Commission. Incidents like this have forced the Charity Commission to implement further regulations to charity accounts.

The investigation by the Charity Commission was to establish if there was fraud and to establish the level of responsibility of the trustees in the management and administration of the charity. They found evidence management misconduct and mismanagement, examples of which were

unauthorised salary payments and other benefits to the preacher and some others, the preacher being the sole signatory to the cheques, a breach of the Charity's constitution. There were no financial controls of cash collections and there were expenses not accounted for. So the Charity Commission appointed a Receiver and Manager under section 18(1) of the Charities Act 1993. The church was closed down in December 2002 with no identifiable assets and the Commission did not order the restitution of benefits, however, as it did not think this appropriate in this case.

But the Commission stated that a charity is entitled to the objective judgement of its trustees, and that such judgement must be exercised solely in the interests of the charity, with no conflict of interest. Normally, a trustee who benefits from a position of trust without the necessary authority is liable to repay the benefit which he has received.

The concluding thought on the subject is that churches need to practice good corporate governance. A trusted and respected spiritual leader must not use "undue influence" in his capacity and induce members to give him money directly nor should he help himself to money contributed to the church. The making of a donation to a church is a fundamental right of any individual and these donations are sometimes the lifeblood for such institutions that mostly do fine and noble work. But distinctions need to be drawn between donating money to a church and direct gifts to one of its members, even the spiritual leader. Principles of guidance need to be established by churches with regard to donations by members to individual members such as the spiritual leader.

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