

Alastair Cameron  
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12 December 2007

Dear Alastair

**Disposal of charity assets**

Thank you for your letter of the 4 July regarding the above I must apologise for the length of time it has taken to provide a response.

In essence your question was can churches that are charities dispose of land or buildings at below the highest possible price to allow the development of social housing.

As you are aware charity trustees have a duty to follow the terms of their constitution and act in the interests of the charity for which they are acting as a charity trustee.

If the charity's constitution makes it clear that disposals of land or buildings should be at the full realisable market value then the charity trustees should abide by this.

If the constitution is silent on the value to be obtained from disposals then charity trustees have to act in the interests of the charity and the disposal has to either further the charity's purposes or obtain the best financial return.

In respect of whether or not the disposal of land or buildings in the circumstances you outline in your letter of the 4 July does further the charity's purpose or is in the interest of the charity OSCR would offer the following guidance:

#### Furtherance of the charity's purposes

If the disposal furthers the charity's purposes then it can be at below the full realisable market value. The difference between the actual price received and the full realisable market value will be the amount the charity has forgone to further its charitable purpose. Where the doctrine of a religious denomination establishes as a religious duty that the poor should be helped or those in need relieved activities of this kind may fall under, or be analogous to, the charitable purpose of advancement of religion. If the charity trustees of a church felt that selling land or buildings for social housing was furthering the advancement of their religion OSCR would not necessarily take issue with that decision, subject to the considerations outlined below under "taking the decision".

#### Acting in the interests of the charity

If a disposal is not furthering the charity's purposes then the presumption is that it is in the charity's interest to gain the full realisable market value. That said however, there can be situations where considerations other than market return have to be taken into account to determine what is in the interest of the charity. Considerations that might mitigate against obtaining the full realisable market value are if the disposal:

- conflicts with the aims of the charity
- hampers the charity's work or alienates its supporters
- is inappropriate on moral grounds
- damages the reputation of the charity

#### Taking the decision

It is for the charity trustees, taking any appropriate advice and in the light of their own circumstances, to make a judgement as to whether a particular disposal at below the full realisable market value is furthering their charity's purposes or in the interests of the charity. In making this judgement charity trustees should:

- consider the aims and objectives of the charity
- keep in mind the principle of maximising return
- balance the risk of alienating supporters and damaging the reputation of the charity against the reduced return from the disposal

- bear in mind that the further the realised value departs from the full realisable market value the firmer the arguments should be that the value obtained does further the charity's purpose or is in the interests of the charity
- consider any tax implications of the disposal.

With regard to any tax implications OSCR cannot give definitive advice and would recommend charities contact HMRC directly. While we understand that gains on straightforward disposals would be exempt there may be tax issues if the purchaser is connected to the charity or the charity enters into an arrangement to share in the profits of any development.

It is unlikely that charity trustees will be criticised regarding disposal if they have considered the correct issues, taken appropriate advice and reached a rational decision, with the decision making process appropriately recorded.

I trust the above is helpful and again apologise for the time it has taken to reply.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Smith', with a stylized flourish extending to the right.

Chris Smith  
Senior Compliance Support Officer