

Insolvent charities and pre-pack sales

October 5, 2016 By Anna Jeffrey — [Leave a Comment](#)

Benn Richards, senior associate with **Russell-Cooke**, discusses the pre-pack administration sale of a registered charity and questions whether there will be an increase in the numbers of charities failing.

What are the details of the pre-pack sale of 4Children?

4Children, a large children's charity and the charity my firm was acting for, transferred a substantial amount of its services and its employees to other service providers immediately after entering administration. This was required to affect an 'orderly wind down' of its services in light of the charity's financial difficulties and to ensure there would be a continuity of those services. The steps that were taken were also in the best interests of the creditors and reduced potential liabilities.

What additional legal considerations were there given it was a pre-pack for a registered charity?

In theory, a pre-pack of a registered charity is no different to any 'normal' pre-pack, in that you negotiate a deal with the purchaser prior to the company being placed into administration and effect that deal shortly after the company enters administration.

However, given 4Children's charitable status and the nature of a charity's business, the matter was not as straightforward. Some of the additional considerations included:

- dealing with and notifying the Charity Commission
- the very nature of a 'not-for-profit' business means transferring certain 'assets' that have little or no market value—you are effectively transferring services under certain contracts and as a matter of law there are certain ways to achieve that
- there are a finite number of willing purchasers to take on the services the charity will provide
- many of the charity's main contractual counter parties were local authorities, which created additional considerations and challenges such as procurement issues

Given the nature of the work, did you consider disclosing the financial position of the charity to the families using the 4Children services?

Given the nature of a pre-pack, if there is 'early disclosure' of the charity's financial position, the effect of that could cause the business of the charity to immediately cease, as it could mean that suppliers terminate contracts, councils tender new contracts, while parents, children and staff are left to deal with the consequences. Therefore, the disclosure of 4Children's financial position was given at the appropriate and earliest moment and after all of the building blocks had already been put into place in order to achieve a transfer of 4Children's services to new service providers.

Were there any particular difficulties to overcome in terms of this pre-pack?

There were a number of practical difficulties to overcome, such as the sheer number of contractual counter parties that had to agree to the transfer of the services—it was not a company with one big supplier and one customer. Aside from that, the management of 4Children, the lead administrator Adam Stephens and other members of the Smith & Williamson restructuring team were mindful that the charity provided services for children and there had to be a continuity of those services.

Do you expect there to be an increase in insolvent charity work?

Charities, like any business, are not immune to the current financial climate. There is an argument that they are actually more exposed simply because quite a lot of charities obtain funding from government grants and unfortunately given the state of the economy there is less money available.

Therefore, there is an argument to say that some charities could be under increasing financial pressure. In saying that, however, charities are well regulated, tend to be well structured, managed and generally financially sound. But I don't think the charitable sector can be immune to the economic climate and there is a risk that there could be further failures.

What practical advice do you have for lawyers involved in pre-pack charity sales?

The advice I would give is that a charitable pre-pack is no different to any 'normal' pre-pack, except for the fact that it is likely that you are not actually selling tangible or profitable assets and you need to be mindful of the Charity Commission and the regulations. In addition, you will need to consider reputational management issues, as the services you're transferring are mostly required by vulnerable people/causes.

Interviewed by Jessica McCarthy.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

Benn Richards

Senior Associate

+44 (020) 8394 6434

Benn.Richards@russell-cooke.co.uk