Guarantees from charity trustees and employees

In our experience, trustees and others connected with corporate charitable organisations are sometimes pressed to guarantee bank loans to charities, leases to charities and other legal obligations. It is unfair to expect charity trustees or employees to take on this personal risk in relation to transactions from which they receive no personal benefit. Best practice for charities who find themselves in this situation is to persuade the landlord or lender that such a guarantee is inappropriate, or if possible, seek accommodation or finance (as the case may be) from another party.

Banks or landlords often require a guarantor when dealing with any small corporate organisation. A guarantor must personally meet any liability when the organisation fails to do so. On the face of it, this is not unreasonable from the point of view of the lender or landlord, because a small company will have limited assets and there is a real risk of financial default in meeting the obligations under the main agreement.

In the case of commercial companies, the parties giving the guarantees tend to be the principal or sole shareholders, and will also probably be the directors of the company, and substantially benefit from its business. There is therefore some sense or justice in the guarantees.

The individual members or directors of a charitable company, community benefit society or CIO do not however generally receive any personal benefit from the charity. The directors/trustees are nearly always unpaid volunteers. Chief executive or senior officers are likely to receive the characteristically modest salaries that are paid to those who work for small charities.

One strategy may be to argue that the bank or landlord should accept that risk as part of their own policy of corporate social responsibility. Requests of this nature, if framed in an appropriate way with due deference to the other contracting party's concerns, can be effective.

In the case of leases, there are alternative ways of providing security that can be offered to the landlord. A common option is a 'rental deposit', a sum of money held by the landlord that is available if the charity is in breach of the lease terms. Subject to that, is repaid at the end of the lease term. A rent deposit should not cost a charity money, but it ties up funds, which can be especially relevant for a revenue funded charity. In negotiations for a rental deposit, it may be possible to focus on the charitable status of the organisation for the public benefit and negotiate a lower deposit than the usual sum equivalent to six months' rent.

Where a bank loan is to be secured by a mortgage, the charity may strongly argue that guarantors are inappropriate as the bank already has a level of security that has been assessed by a valuer and should bear any further commercial risk.

If there is no available security and a lender who is prepared to proceed without guarantors cannot be found, the charity should consider whether the loan is in principle appropriate and possibly explore alternatives such as collaborative arrangements or a merging with another charity rather than burdening its employees or trustees with personal liability.

For further information, please contact:

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