

Written evidence, Hugh Pearce (Partner, Stone King LLP)

I spend 100% of my time supporting charity clients with legal advice on Charity Property projects (70-80% of my firm's work is for charities).

- The vast bulk of the LC report and recommendations in Part 5 on Property Matters I commended and supported (and thought very well consulted upon). I was happy to see the vast bulk approved by Government, and pick up on the two (16 and 18) that the Government did not.
- In my response to the consultation I debated the pros and cons of the “**disposals to trading subs**” (Connected Persons) point (Recommendation 16). I was well aware of big charities being annoyed by having to get Charity Commission consent when the sub is only there to serve the Charity, but I also flagged up my concerns about how easily they can go the wrong way, especially for less property-savvy charities. My view of the ideal law here is to help Trustees “do the right thing” and avoid the traps. I have seen a number very nearly go off the rails – not unusually encouraged by savvy developer third parties - so I was not surprised about the Charity Commission's views on the recommendation, and the Government Response in light of that, and not unhappy to see it. Whilst the trust lever is a protection for the Trustees, the property control is the real protection for the Charitable asset.
- On the s121 “**designated land notices**” point (Recommendation 18), I leaned the other way. Whilst recognising the laudable motive of “helping Trustees do (and be seen to do) the right thing”, experience in practice has shown that this could be viewed as one obligation that might be “more honoured in the breach”? Charities seem to find it not an easy one to spot as a duty at the right time: it is not always clear to Trustees (and their selling agents) that they have “designated land” and what that means. I have more than once been presented with an urgent sale that Trustees and agents have put together and had to remind them of the duty to go back out again (with the messy risk to the sale of the buyer getting cold feet). So I do not query principle here, but wonder how effective the law has been in the protection of charitable mission in practice? I am also uncomfortable about law that may often have been overlooked. I do though wholly understand and appreciate where the Charity Commission and Government are coming from and perhaps my only added thought is to encourage any ways by which it might be possible to make it easier for Trustees to spot - early - when it should be viewed as applying, and then what to do for the best. Charity Commission published guidance is very good these days, but perhaps this is an area they could specially look at? Also - as with wider special trusts - we in practice will continue to flag to Trustees that they may like to consider voluntarily including a self-certifying restriction on title to the land that is designated: just so they have a reminder of the extra task they have to address if they wish to dispose.
- I also have one specific query/observation on the original **s117(3)c proposals** (Recommendation 20) and mention that further here. I have noted that - whilst I think all other aspects of the LC proposals are “loosening” of legal burdens on Trustees/charities - the s117(3)c proposal is in fact a “tightening”. I recognise the well-argued reasons in the LC Report, but the fact is that at the moment a disposal by one charity to another charity that falls within the disponent's objects could be done under s117(3)c, whether it is (A) by way of gift, or (B) part gift and part financial return, so long as the disposal is not with the intention of a full market return. Such disposals are currently exempt from needing Charity Commission consent, or a Qualified Surveyor's Report. Under the revised proposals a (B) “mixed motive” (part gift/part financial return) disposal will have an added duty: the ongoing exemption will only apply to “pure” gifts (A). As I say, whilst I might prefer no change, I do understand and follow the LC's thinking - which links into the social investment policy. I was mostly keen on this point that the decision-makers realise the fact that this is indeed a “tightening”, given what is otherwise a “loosening” set of proposals: so they can reflect on that when coming to their decision.