

The Islamic Charitable Trust – the best Legal Structure for Islamic Charities

Solicitors Journal Winter 2000 Charity and Appeals Supplement, 17th November 2000

We live in a multi-faith multi-cultural society regulated by the law of the land. Every different group expects to be able to exercise all their rights by virtue of the Human Rights Act 1998. When setting up a new charity or updating an old one, when drafting a new governing instrument or amending an outdated one, it is important to be familiar with the particular religious, educational, social and cultural needs of the community and beneficiaries whom the charity is intended to serve. If a lawyer is unaware of such needs, he or she may recommend a structure which, although it may be legally permitted, is nevertheless unsuitable – and may include clauses which are inappropriate. As regards administrative structures permitted by UK law, both the pyramid and the beehive models are possible, even though the respective characteristics of the pharaoh and the human equivalent of the queen bee and their helpers are very different.

Islamic charities with an unsuitable legal structure and inappropriately worded governing instruments inevitably experience the most difficulties and cause the Charity Commission the most trouble. During the last twenty years Islamic organisations and Muslim communities in the UK have been beset by difficulties and troubles whenever they have adopted or tried to adapt administrative structures which are alien to the way of Islam. These pitfalls can be avoided, provided that the appropriate approach is taken.

In order to appreciate the needs of Islamic charities and their beneficiaries, it helps to know a little about Islam and Muslims: The Arabic word *Islam* means ‘safe and sound’ and ‘submission’ to the will of God. Muslims believe that there is only one God and that the Prophet Muhammad, blessings and peace be on him, was the last Messenger sent by God to man. The Arabic word *Allah* literally means ‘the God’. Muslims believe that by following the example of the Messenger of Allah and his first sincere followers and by obeying what is commanded in the *Qur’an*, the revelation revealed to him through the Angel Gabriel, they are thereby submitting to God’s will and will therefore be safe and sound both in this world and in the next. Muslims living in the UK are also required by the law of the land to obey it. Sometimes there are differences and contradictions between the two, sometimes not. As regards the aims and administration of charities, there are some minor differences and no major contradictions. For example, although Muslims are not permitted to make money by means of usury, there are other forms of investing trust funds which are permitted both by the way of Islam and by the law of the land.

In ascertaining the needs of Islamic charities more precisely, there are three main elements which have to be considered: *firstly*, the practice of the *Sunna* – which can be defined briefly as: ‘the customary practice of a person or group of people. It has come to refer almost exclusively to the practice of the Messenger of Allah and to the first generation of Muslims;’ *secondly*, the requirements of the *Shari’a* – which can be defined briefly as: ‘lit. road, the legal modality of a people based on the Revelation of their Prophet. The final *Shari’a* is that of Islam;’¹ and *thirdly*, the requirements of the law of the land – which cannot be defined briefly! Ideally Muslim trustees should be in a position to follow the *Sunna* in accordance with the *Shari’a* while complying with the law of the land.

¹ These and subsequent definitions of Arabic terminology are taken from *A Glossary of Islamic Terms* by Aisha Bewley, [Ta-Ha Publishers, London].

As regards the three main types of charity in the UK, the Charitable Association and the Charitable Company are in many respects very different to the Islamic model. The Charitable Trust on the other hand, is very close to that of the traditional Islamic *Waqf* – which can be defined briefly as: ‘an unalienable endowment for a charitable purpose which cannot be given away or sold to anyone.’ Indeed some historians have suggested that the concept was learned from the Muslims during the Crusades and subsequently introduced into the UK, possibly by the Knights Templar. By utilising the structure of a Charitable Trust, therefore, it is easier for those administering an Islamic charity to follow the way of Islam while also complying with the requirements of English law. Fortunately in the area of charitable trusts there are no significant points of conflict between the two.

The main requirements of the *Shari‘a* and the *Sunna* in the context of administering a charity are that the trustees should not lie or cheat or steal or bear false witness, they should teach people how to worship God, educate people, and help the poor and the needy. Muslim trustees know that they are under a far greater scrutiny than that which can be exercised by man, computer and CCTV combined, since they believe that God is always aware of their every intention and action – about which they will be questioned on the Last Day and as a result of which they will end up either in the Garden or in the Fire in the world which awaits them on the other side of death.

Let us consider and compare a little more closely the main administrative characteristics – and their social effects – of the Charitable Association, the Charitable Company the Islamic *Waqf*, and the Charitable Trust:

The Charitable Association:

As regards the administration of a Charitable Association, its main characteristic is that its governing body is subject to periodic elections. Although the modern (as opposed to the ancient Greek) democratic process is now well established in the UK, it has little in common with the practice of the *Sunna*. Many Islamic charities have nevertheless adopted this particular model, along with the traditional format of a compulsory membership fee which entitles paid up members to stand for and vote at annual or biannual elections for posts in the Executive Committee. This particular structure almost inevitably results in political instability, with the Muslim community splitting up into different factions and literally fighting the election, often in a very physical manner. This leads to behaviour which is far from the way of Islam and which is a drain on the resources of the Charity Commission.

A familiar scenario is this: A group of sincere Muslims raise money and build or convert a building into a Mosque and Islamic Centre. They adopt the administrative structure of a Charitable Association, whose members are the worshippers who regularly attend the Mosque. In the early years the people who use the Mosque are united behind the founding members whom they accept gladly and elect regularly. Once the hard work is over, a second group of less committed Muslims appears and tries to take over, often by paying the membership fees of nominal Muslims who hardly ever use the Mosque in return for their votes. This tactic is often accompanied by lies, bribes and intimidation. The results are awful, especially if the mafia element – who are concerned more with power and reputation than with doing what is pleasing to Allah – are ‘elected’ and gain control. The way to avoid this is either to set up a charitable trust in the first place, or to convert from charitable association to charitable trust, preferably before the carpetbaggers arrive.

The Charitable Company:

As with the Charitable Association, the Charitable Company is characterised by a structure which is alien to the *Sunna*. It is sometimes adopted by the larger Islamic organisations because it appears to have two main advantages: *Firstly*, it is regarded as having its own legally recognised identity. It can own property. It can enter into contracts and sue and be sued in its own name. *Secondly*, in the case of financial loss or damage, the liability of its executive body is limited, often only to £1. This often appears an attractive proposition, although in fact any sincere trustee will know that he or she is ultimately answerable to Allah for his or her actions and will not be able to rely on cleverly worded escape clauses on the Last Day.

The two main disadvantages of this structure are: *Firstly*, because it is a company, a Charitable Company is subject to the requirements of Company law as well as to those of Charity law. This makes its administration more complicated and difficult to understand. *Secondly*, because the administration is more complicated, it becomes more bureaucratic and creates a 'them and us' environment, with a separation between the management and the majority of worshippers. This is why many large religious institutions feel like large religious institutions, rather than places which are blessed. They become centres of bureaucracy and delay by committee procedure, rather than centres of worship. The ethos of this model is far removed from the prophetic model, no matter how profuse the use of Islamic terminology.

The Islamic Waqf:

The unique characteristic of an Islamic *Waqf* is that ownership is regarded as being vested in God. Thus a Mosque established as a *Waqf* 'belongs' to Allah and cannot be sold to be used as a supermarket. Whenever an Islamic *Waqf* is created, trustees are chosen to administer it. They in turn choose further trustees to take their place as they grow old and retire or die. Thus the trustees fulfil a trust which is placed in their hands. They are like caretakers. This process has been known to last for centuries. The role of the trustee in *Shari'a* is therefore very similar to that of a trustee under UK law, although under UK law nothing is regarded as 'belonging to God'. Ownership is linked to the charity itself and must always be vested either in the trustees for the time being, or in holding trustees, or in a legally recognised entity which is regarded as having a legal identity of its own.

The Charitable Trust:

The administration of a Charitable Trust is primarily the responsibility of a group of trustees who can as the charity grows arrange for a second tier of management by choosing a subordinate Management Committee to assist them. With a Charitable Trust, there are no periodic elections: once a group of trustees has been selected, it is these trustees who choose new trustees in the future. This helps to secure continuity and stability. New trustees can be selected from members of the Management Committee once they have shown themselves worthy of the task. It is therefore very important for the future well-being of an Islamic charitable trust that the initial trustees are trustworthy people who have *taqwa* ('fearful awareness of Allah and acting accordingly') and love for His Messenger, blessings and peace be on him. They cannot be removed by rigged elections – only by misconduct, sickness, old age, retirement, or death – and they can administer the charity with flexibility and a minimum of bureaucracy. There is no obligatory membership fee, which leaves people free to give voluntary donations, and not in order to secure the right to vote! There are no elections and therefore no factions, no fighting and no (successful) take-over bids. Muslim trustees are obliged to consult their community before any major decisions affecting it are made. This process is known as *shura* ('consultation').

To conclude, the best structure for an Islamic charity – for the trustees, the beneficiaries and the Charity Commission – is the Charitable Trust, provided that the trustees are the best of their community and provided that the Trust Deed is well drafted. Space does not permit a detailed study of the main elements of a suitably drafted Islamic Charitable Trust Deed. Suffice it to say that the Islamic Charitable Trust is capable of being structured in such a way that it is virtually identical to an Islamic *Waqf* as regards the way in which it is administered, while at the same time fulfilling all the requirements of UK law so as to ensure the quiet enjoyment of charitable status.

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