Internal disputes – and how to avoid them

Our faiths teach us values of conciliation and forgiveness – yet faith-based charities are particularly prone to internal division and disputes. How do these disputes arise, and can anything be done to prevent them?

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Alex de Jongh outlines some measures faith-based organisations can take

No charity or community group is immune from disputes. Sometimes they will need to take action against third parties to assert or protect their rights; sometimes they will be on the receiving end of such claims. But the most damaging disputes are often internal: disagreements among a charity's trustees, or between trustees and members.

Unfortunately, these internal disputes arise with depressing frequency in faith-based organisations. Bates Wells' dispute resolution team sees examples in every major faith community.

This, no doubt, reflects the importance of these charities to their communities, and the passion and commitment of the individuals who serve as volunteers and trustees. This positive energy can quickly be diverted to destructive effect when hostilities break out. Internal disputes in faith-based organisations are often characterised by the strength of feeling they raise, and the bitterness with which they are contested.

These disputes can do enormous damage. They can divide entire communities: positions quickly become entrenched, and members of the congregation feel forced to take one side or the other.

They prevent the charity from fulfilling its objects and reaching its full potential. They can prevent effective governance and hinder day-to-day management. And they can be very expensive if lawyers become involved.

Disputes within religious organisations tend to play out in public. As such, they can cause significant reputational harm to the charity – or even the wider faith community – and lead to a loss of donations and other support. They can degenerate into physical confrontation: hostile attempts to exclude opponents from the charity's premises by forcing entry and changing locks are not uncommon.

Examples of reported cases are plentiful – from the Ethiopian Orthodox Church (*Bisrat v Kebede*, 2015) to a Wolverhampton Gurdwara *(Singh v Charity Commission & others*, 2015), and from a Buddhist Vihara (*Muman v Nagasena*, 2000) to mosques in Stepney (*Choudhury v Stepney Shahjalal Mosque*, 2015) and Southampton (*Southampton City Council v Southampton Medina Mosque Trust*, 2010).

'Charity proceedings'

Some protection is offered by the fact that inward-looking disputes in charities are regarded as 'charity proceedings' (a term defined at section 115(8) of the Charities Act 2011). Such claims cannot be pursued without authorisation from the Charity Commission or, if it refuses a request, an order of the High Court.

The Commission will authorise the proceedings if it is of the view that it is in the interests of the charity that the issue is adjudicated by the court. It will usually refuse if it decides that it can deal with the issue itself using its statutory powers, or if it decides that the proceedings are not in the charity's interest.

Whether or not the commission, or the court, allows the dispute to be litigated, the underlying disagreement between the parties will still need to be resolved.

Recurring features

Internal disputes often boil down to a struggle between two or more groups who disagree about the way in which the charity is being run, and about where the power to control the charity resides.

This can manifest itself in a variety of ways. Disputes may arise in relation to the eligibility of individuals to serve as trustees, for example, or the process by which they were elected or appointed.

There may be disagreements as to the status of meetings – it is common for rival groups to call board meetings or general meetings at which decisions are purportedly enacted. Challenges to the validity of those decisions inevitably follow.

There may be a lack of clarity as to whether the individuals named as trustees of the charity meet the statutory definition of charity trustees as set out in

section 177 of the Charities Act 2011: 'the persons having the general control and management of the administration of a charity'. People holding other positions of responsibility within the charity may claim that they are the 'true' trustees.

Problems can also arise in relation to membership. Where eligibility criteria are unclear, or where membership registers have not been properly maintained, there is a risk of entryism, with rival factions seeking to enlist ever-greater numbers of people claiming to be members of the charity with the right to vote on key issues.

Preventative steps?

It is impossible to prevent disputes, and they often arise in unpredictable ways. But there are some practical steps you can take to make disputes less likely to arise, or easier to resolve when they do.

First, charities should address disputes at the earliest opportunity, and should consider enlisting outside help in the form of an independent mediator (who may be a respected person within the same faith, or of a different faith, or from no faith tradition).

Charities may be reluctant to adopt mediation – sometimes out of concern that an outsider will not understand the particular circumstances of the charity, or a sense that the dispute is simply too difficult to resolve. But mediation has a high success rate even in disputes that appear intractable. An independent perspective helps parties understand what they, and the charity, have to gain and lose if the dispute is not settled.

Second, charities should follow the correct procedures and document the fact that they have done so. This may seem obvious, but errors that may be overlooked in good times can take on unforeseen importance when disputes emerge later.

Above all, charities should consider reviewing and updating their governing document. A professionally drafted constitution is a luxury that small start-up charities may not feel they can afford, but this creates a risk that may increase as the charity grows.

Problems often stem from – or are exacerbated by – weaknesses in a charity's governing document. In many of the disputes we see, the constitution is poorly drafted: a source of ambiguity rather than clarity. Ambiguity breeds disputes.

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To take one example, in a judgment in a dispute involving a temple in which Bates Wells acted for the successful claimants, the court noted that the temple's constitution was '*not a professionally drafted document. In many respects its wording is unclear, and that imprecision lies at the heart of a number of the issues which have arisen between the parties*'.

Charities should therefore consider reviewing their governing documents, preferably in consultation with independent external advisors, to ensure that it meets the charity's current requirements, provides clarity, and accords with good governance practice. Consider carefully issues such as who participates.

Of course, this comes at a cost (although it need not be prohibitive). But it is easy to make false economies. For trustees concerned that their charity's constitution may not be entirely fit for purpose, or simply that it has been gathering dust on the shelf, the question may be not so much 'how can we justify incurring the expense?' but rather, 'how can we justify not doing so?'.