

Managing buildings – legal obligations & cost liabilities

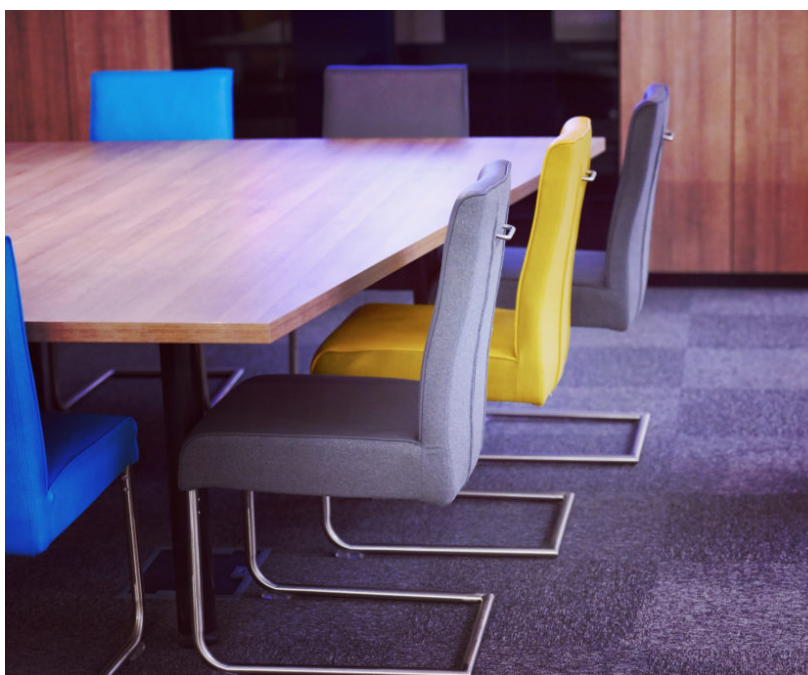
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Overview

This resource is designed to give an overview of the main things that community building managers will need to consider with respect to meeting their legal obligations and the cost liabilities of running their building(s).

This sheet should be read in conjunction with 'Managing Building Day to Day operations' which covers other legal responsibilities such as Health and Safety.



This resource is designed to give an overview of the main things that community building managers will need to consider with respect to running their building(s)

Introduction

The information specifically covers the following:

- Rates and taxes
- Fuel and power supplies
- Insurances

Some of these legal obligations and cost liabilities will be universally applicable to all organisations, but others will vary according to your organisation's legal status. Where there are variations these are explained.

Please note, the information provided here is intended to be an overview. Your organisation's board of trustees/directors should always have regard to their obligations as set out in their organisation's governing document and if there is cause for doubt you should take advice from the relevant bodies and / or qualified professionals, especially where risks are identified. At the end of this information sheet some of the key sources of more detailed further information are given.

Rates and Taxes

As managers of a community building you must consider your liability to pay both rates and taxes to one or more public bodies.

Rates

Rates are collected by your local authority and all organisations whose objects are charitable (whether they are a registered charity or not) are eligible to receive an 80% mandatory relief on **National Non-Domestic Rates** where the property is wholly or mainly used for charitable purposes. This rate relief needs to be applied for and local authorities have powers to grant additional discretionary rate relief up to 100%, with each case decided on its merits by the authority in question. The criteria used for making a decision includes things like:

- Accessibility – by the full range of people / groups within a community;
- The type of services provided – for example, to help develop the skills of people living locally especially those that are currently under-represented;
- Whether their provision directly or indirectly relieves the authority of the need to make its own provision.

Application for the additional discretionary relief also needs to be made to the local authority on an annual basis.

Corporation Tax

Corporation tax is the tax levied on the profits of businesses and organisations involved in trading. The rate varies and is set out in the government's budgets. From April 2023/4 the rate was set at 25%. Charities that undertake to trade may be exempt from paying Corporation Tax in some limited circumstances:

- The trading activities are directly in line with your charity's objects – these are known as 'primary purpose trades'
- The trading activity directly involves your beneficiaries, for example; where you sell goods made by them in a sheltered workshop or training scheme.
- Where you carry out 'occasional trading' such as jumble sales as part of a fundraising event.
- Where your trading is not 'primary purpose' but is small-scale in nature and does not exceed set 'Annual Turnover Limits' – these are currently set at **£5,000 or 25% of the charity's gross income up to a maximum of £50,000.**

If a charity's trading income exceeds these limits, it may be required to pay Corporation Tax on the profits from the trading activities that are outside the charity's primary purpose. Trading by incorporated businesses (Including Community Interest Companies, with social aims or otherwise, will as a matter of course be subject to Corporation Tax.

The law around Corporation Tax and trading for charities and charitable companies is complex and the above summary of the main provisions should only be used as a starting point to your research in identifying your organisation's liability to pay Corporation Tax. **HMRC** have a dedicated page on their website for charities – see 'Further Information' below. You are strongly advised in any event to seek professional advice in this area.

Important Information

If HMRC ask you to complete a Corporation Tax Return you must respond even if you are not due to pay any tax. If you do not file a return when due, you will be subject to a fine.

VAT

There is often a misconception that Charities do not pay VAT. Whilst there are some items that maybe VAT exempt for a charity, there is not a blanket exemption.

VAT on Purchases: VAT is applied to purchases for both personal and business use, including those for community buildings or charity premises. However, charities and non-profits may qualify for VAT exemptions or reliefs on certain purchases, like energy costs or qualifying goods. The key question is whether or not you have to charge your customers VAT on the goods and services you supply?

The basic answer is that you will need to register to collect and pay VAT:

VAT Registration Threshold: if the total taxable turnover of your organisation exceeds the VAT registration threshold (which was £85,000 as of April 2020), then you must register for VAT. This includes all income from activities that are not exempt from VAT, such as sales of goods or services (but excludes grants, donations, etc.). It's essential to monitor turnover carefully to ensure compliance.

Exempt and Non-Taxable Income: When calculating turnover, income from activities like room hire, grants, donations, and investment income are typically exempt from VAT. It's always good to confirm this with HMRC or a VAT specialist, as VAT rules can be very complex, particularly in the case of mixed-use income (e.g., room hire and lettings).

You are best advised to consult **HMRC** or a professional with specialist knowledge. If your total turnover is nearing the threshold limit and / or you are not quite sure whether to register or not it is worth checking in with **HMRC** as penalties for non-registration or late registration can be considerable.

VAT Returns and Record Keeping: Once registered for VAT, organisations must maintain detailed records of VAT paid on purchases (input tax) and VAT charged on sales (output tax). VAT returns are usually filed quarterly, and you pay the difference between output and input tax to HMRC. If you have paid more VAT on purchases than you've charged customers, you can reclaim the difference.

How much VAT you charge your customers depends on what you are selling. As at April 2020 there are three rates of VAT:

The 'Standard rate' set at 20%,

'Reduced rate' of 5%

'Zero-rated' This means VAT is technically applicable but the rate is 0%. You still need to report zero-rated sales in your VAT returns.

Many organisations get caught out with VAT when they are undertaking grant-funded projects, and in the case of building projects this can sometimes amount to tens of thousands of pounds. It is therefore essential that you study the guidance from funders on VAT at the time when you apply for the grant. You should also look at how a grant-funded project might impact on your organisation's VAT registration status. Here again, you should get the applicable guidance from **HMRC** and talk to an accountant or VAT specialist.

If your organisation is a charity then you will still be liable to pay VAT if your organisation has reached the turnover threshold, however, some of the goods and services you supply may be zero-rated. These include concessions on certain charity fundraising events, sale of donated goods, certain types of construction projects, disability aids, advertising etc. (for further guidance on this you should consult **HMRC**). It is worth checking too that you are not being charged the standard rate on these items.

In summary – VAT for charities and community organisations is complicated, particularly with regard to what is exempt or zero-rated. It's crucial to understand your specific VAT obligations, particularly if your income nears the VAT registration threshold or if you undertake significant grant-funded or building projects. Always consult with HMRC or a VAT specialist to ensure compliance and to avoid unexpected costs.



Information

If you have a trading subsidiary it will enjoy some, but not all, of the VAT privileges of its parent charity, provided there is a formal agreement for trading profits from relevant sales to be passed to the charity.

Fuel and Power Supplies

Fuel and power supplies to a building used entirely for domestic purposes or for non-business charitable activities ('qualifying purposes') are taxed at 5% (hiring out rooms is a business activity, so is membership which confers substantial benefits.)

If at least 60% of the building is used for a qualifying purpose, then fuel and power supplies can be rated at 5%; if less, then supplies of fuel and power may be apportioned between qualifying and non-qualifying uses with the non-qualifying portion taxed at 20%. Besides these instances, supplies of fuel and power below certain specified low quantities will automatically be rated at 5% whatever the use of the building.

The Climate Change Levy (CCL) is a tax imposed on the use of energy by businesses and the public sector. It was introduced, with effect from 1 April 2001, as part of Britain's commitment under the **Kyoto Agreement** to reduce its emissions of greenhouse gases. **CCL** is generally payable on business supplies of electricity, gas (including liquid petroleum gas – LPG) and coal.

Fuel oil is not subject to **CCL**, because it is already subject to excise duties. The rules for liability to pay this tax follow existing VAT rules, so that supplies currently charged VAT at the 5% rate will not be charged **CCL**, but supplies currently charged VAT at 20 per cent will be liable.

Hence, the levy does not apply to energy used by registered charities for non-business purposes. The tax is collected by energy suppliers and remitted by them to **HM Customs and Excise**. It will be added to fuel bills before VAT and, although there is no legal requirement to do so, it is likely that suppliers will show it as a separate item on bills.

Supplies of fuel for domestic use are excluded from **CCL**, and there is an exemption for business premises where only a small amount of fuel is used. Liability to **CCL** can also be mitigated by measures to reduce energy consumption – by better insulation, installation of double glazing, energy- efficient light bulbs, purchase of energy-efficient equipment, and so

forth. Liability for **CCL** can also be reduced by accepting an option to take a proportion or the whole of an energy supply from exempt renewable sources of energy.

HMRC will determine the precise definition of these sources, and the definition will change from time to time as technologies are developed. They will include sources such as on-shore and off-shore wind, small scale hydro-electricity, energy crops, waste-to energy, landfill gases, wave and solar generated power.

Electricity produced by these means is usually more expensive than more conventionally produced power, because of the high capital cost and (usually) comparatively small scale of new installations, but exemption from **CCL** is intended to offset these costs.

If you think you are not eligible to pay **CCL** but your energy supplier is charging it, you should in the first instance contact your supplier.

Similarly, your supplier should be able to give you advice and assistance on other matters related to **CCL**. If this fails, your local **HMRC** office who should be able to assist.

Water and Sewerage Charges

Water and sewerage charges are made by the privatised water companies. You have the option of having your water consumption metered and paying for how much you use. You will still have to pay a standing charge, regardless of your usage. Water supplies are zero-rated for VAT unless the supply is made to an industrial customer.

You need to apply annually to the water company for the zero rating on the supply of water. The water supplier is responsible for deciding whether the customer uses water in connection with an industrial activity. If you believe that VAT is being applied incorrectly you should contact the relevant water company in the first instance.

Your water company should be able to give you a rough idea of how much water you will use, and the cost. You may also have to pay for installation of the meter, but some companies will install a meter free of charge, and allow you a year to compare costs.

Information

Meter installation can be carried out either by the water authority or private engineers. Some firms offer guaranteed savings.

It is recommended that you read the 'small print' before signing any agreement.

OFWAT – the Office of Water Services – is an organisation looking after water consumer interests and has 11 regional offices.

Insurance

Organisations need to arrange insurance cover for buildings they own. If they hold a lease, the landlord usually insures the building, but terms of the lease should always be checked to identify who is responsible

for insurance. The normal risks or perils insured against are: destruction or damage by fire, lightening, explosion, storm and tempest, flood and subsidence.

When insuring a building the following should be considered:

- The full reinstatement cost of the building must be insured against, factoring in items such as increased costs due to inflation (e.g. if the building works are delayed whilst planning permission is sought); the cost of professional fees (e.g. architects), and demolition/site clearance costs.
- Charity trustees are under a legal obligation to take all reasonable steps to protect the charity's assets and this includes the provision of adequate insurance. They have powers under the **Trustees Act 1925, s.19(1)** and **the Trustee Act 2000** to insure any charity property and pay the premiums out of charity funds.

Where the organisation is a landlord and responsible for insuring the building, or a tenant who wants to check the adequacy of the insurance provided by the landlord, the following should be considered:

- If the building cannot be occupied, the policy covers loss of rent for a reasonable period (e.g. 2 years). The landlord will then be guaranteed the rent, recovering it directly from the insurers, and the tenant will not be faced with the burden of paying for premises it cannot occupy.
- Provision should be made for the apportionment of insurance monies between the landlord for the reinstatement cost of the building and the tenant to compensate for the cost of any improvements.

Contents Insurance

The contents of business premises should be insured against damage and loss. Valuable items might best be protected by an 'all risks' policy which covers damage occasioned by most events (and can cover property when it is outside the building), but generally excludes war; nuclear contamination; wear and tear, riot and civil commotion.

Charity trustees are under a legal obligation to arrange adequate insurance but in certain situations this may not be affordable if the value of the insured items is too high (e.g. exhibits in a museum). In these situations guidance must be sought from the Charity Commission.

When arranging contents insurance you need to decide whether the policy should:

- Be on a 'new for old' basis
- Be index linked
- Cover losses from theft
- Cover accidental damage
- Cover goods or cash in transit
- Cover specified high value items such as computers.

Public Liability Insurance

Public liability insurance is not mandatory but is considered essential where your organisation interacts with the public through the use of its building, provision of services or its employees. This type of insurance covers death, injury, illness or damage to property incurred by members of the public as a result of the organisation's activities.

Many service contracts require the provider to take out public liability insurance. It typically excludes liability covered by other policies such as:

- Employer's liability
- Motor vehicles
- Liability arising under contract
- Professional negligence
- Product liability

Public liability insurance generally extends to volunteers and trustees (although this should be confirmed with your broker/adviser).

Where volunteers are included it is important to ensure they are covered when working in other peoples' homes, or in other premises or on external activities such as play-schemes or environmental projects.

You should also check that volunteers above or below a certain age are not excluded under the policy and always inform volunteers about the insurance cover which applies to them generally.

Public liability insurance typically **does not** automatically cover contractors delivering a service for a charity. Contractors are usually responsible for their own insurance, including public liability, unless specified otherwise in the contract with the charity. In some cases where the cover does cover a contractor, they are advised to have their own insurance as the charity could make a claim against the contractor

Further Information

[Charities and Tax HMRC](#)

[Charity Commission](#)

Acknowledgement: Some of the guidance above has been extracted and abridged for use from 'Managing Your Community Building' by Community Matters and Peter Hudson (2000)

Disclaimer: The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.