



**"RE: Caxton Foundation [IWOV-LIVE.FID538863] - lawyers' confirmation of legality of Caxton Foundation providing accommodation etc to "all entities""**

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Created by:	Jonathan Stopes-Roe on 10/06/2011 at 11:39
Original Subject:	RE: Caxton Foundation [IWOV-LIVE.FID538863]

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**Jonathan Stopes-Roe/HP-SL/DOH/GB**

10/06/2011 11:39

To"Antill Justine LEGAL GROUP DH LEGAL SERVICES"

<JUSTINE.ANTILL@GRO-C

cc"Kent Graham LEGAL GROUP DH LEGAL SERVICES"

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Wight/PH6/DOH/GB@GRO-C

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Glen Clarke/HP-SL/DOH/GB@GRO-C

bcc

SubjectRE: Caxton Foundation [IWOV-

LIVE.FID538863]F624225FA0137568802578AB0033C289

Justin

Moir's unequivocal endorsement of the propriety and effectiveness of her clients' (the Caxton Trustees') proposal on this matter is most reassuring. Thanks for checking this out. Let us proceed accordingly - I shall sign the amendment deed as soon as I get the word from Graham.

Jonathan Stopes-Roe

Deputy Director, Legislation & Environmental Hazards

Health Protection Division  
Department of Health  
Wellington House  
GRO-C

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10/06/2011 10:25

To "Kent Graham LEGAL GROUP DH LEGAL SERVICES"  
<GRAHAM.KENT@GRO-C> Jonathan  
Stopes-Roe/HP-SL/DOH/GB@GRO-C

cc

Subject RE: Caxton Foundation [IWOV-LIVE.FID538863]

Jonathan

That sounds ok to me.

Graham - you will have a chance to see this Monday morning.

I suggest Jonathan you leave off signing the Deed of Amendment until Monday - its only one working day now, we have made some progress this week, and Graham can give this a once over bearing in mind what work he has done on it already, on Monday

Justine

Justine Antill

Deputy Director

DH Legal Services

NHS Organisation, Secondary Care, EU and Information Division (part of Legal Group)

5th Floor

The Adelphi

1-11 John Adam Street

LONDON WC2N 6HT

Tel: GRO-C

-----Original Message-----

From: Moira Protani [mailto:Moira.Protani@GRO-C]

Sent: 10 June 2011 10:19

To: Antill Justine LEGAL GROUP DH LEGAL SERVICES

Cc: Stopes-Roe Jonathan DOH GSI; Martin Harvey; Kent Graham LEGAL GROUP DH LEGAL SERVICES

Subject: RE: Caxton Foundation [IWOV-LIVE.FID538863]

Justine

Thank you for your email.

The proposals are entirely lawful and none of the parties need to be concerned.

A charity can only do things which are charitable and which fall within its objects. De minimis non-charitable activity can be ignored. Once Caxton's objects have been changed it can provide services free of charge to MacFarlane Trust and to Eileen Trust. Caxton cannot provide services free of charge to the non-charities.

Macfarlane (and subsequently Caxton) can justify the provision of services to SKF and MFET which are non

charities either on the basis that they are charged for and de minimis. By this, I mean that in proportion to the majority of its activities, the provision of services to SKF and MFET is small (which it is) and that it is only using surplus capacity with which to service SKF and MFET which is also true. Caxton will not, for example, hire staff purely to service SKF and MFET. As legal adviser to Caxton Foundation I am satisfied, and have advised the trustees, that what is being proposed in the interests of saving VAT, falls within the powers of the Caxton Foundation.

Kind regards

Moira Protani

Partner  
Wilson Solicitors LLP

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-----Original Message-----

From: Antill Justine LEGAL GROUP DH LEGAL SERVICES [mailto:JUSTINE.ANTILL@**GRO-C**]

Sent: 10 June 2011 10:10

To: Moira Protani

Cc: Stopes-Roe Jonathan DOH GSI; Kent Graham LEGAL GROUP DH LEGAL SERVICES

Subject: FW: FW: Caxton Foundation [IWOV-LIVE.FID538863]

Moira

Your reply raises questions that we need to be comfortable with before the Deed of Amendment can be signed.

I am not particularly familiar with the history, but my understanding is that:

The Alliance House group - charities and the non-charities - has for years operated its admin functions on a recharge basis through MFT (a charity). Following concerns that this business model is inappropriate: (a) for MFT's charitable objectives; (b) as a matter of VAT liability on recharging, we have considered for (a) giving the task to Caxton, whose objectives are (or can be made) more accommodating and for (b) by making the bulk of the transactions (staff and accommodation) into a "free service" provided by Caxton using a specific allocation from DH.

We are not clear what the implications are of you saying assistance to the non-charities must be regarded as de minimis. What if it is not de minimis as a matter of fact? Can you please confirm that the business model now proposed is not going to run into any trouble by not being de minimis, or being otherwise ultra vires.

Thank you.

Justine

Justine Antill  
Deputy Director  
DH Legal Services

NHS Organisation, Secondary Care, EU and Information Division (part of Legal Group) 5th Floor The Adelphi  
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Tel: **GRO-C**

-----Original Message-----

From: Moira Protani [mailto:Moira.Protani@GRO-C]  
Sent: 09 June 2011 14:55  
To: Antill Justine LEGAL GROUP DH LEGAL SERVICES  
Cc: Martin Harvey  
Subject: RE: Caxton Foundation [IWOV-LIVE.FID538863]

Hi Justine

MFET and SKF are non-charitable bodies and would not be referred to in the charity's governing documents. Services to be supplied to those bodies by CF would be (and must be) regarded as de minimis.

Many thanks for dealing with this matter. I will now prepare a version for signature by the parties and will get on with dealing with the Charity Commission and obtaining registration for CF.

Kind regards

Moira Protani

Partner

Wilson Solicitors LLP

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Bristol Office: Broad Quay House, Broad Quay, Bristol BS1 4DJ

Message-----

From: Antill Justine LEGAL GROUP DH LEGAL SERVICES [mailto:JUSTINE.ANTILL@GRO-C]  
Sent: 09 June 2011 13:24  
To: Moira Protani  
Cc: Stopes-Roe Jonathan DOH GSI; Wight Ailsa DOH GSI; Jecock Rowena DOH GSI; Kent Graham LEGAL GROUP DH LEGAL SERVICES  
Subject: FW: Caxton Foundation [IWOV-LIVE.FID538863]

Moira

To confirm that we are content with the Deed of Amendment except we wondered whether the 'associated bodies' you refer to in your email are MFET and SKF and whether they should also be mentioned in the Deed? Kind regards Justine

Justine Antill

Deputy Director

DH Legal Services

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Tel: GRO-C

-----Original Message-----

From: Jonathan.Stopes-Roe@GRO-C [mailto:Jonathan.Stopes-Roe@GRO-C]  
Sent: 03 June 2011 13:33  
To: Antill Justine LEGAL GROUP DH LEGAL SERVICES  
Cc: Wight Ailsa DOH GSI; Jecock Rowena DOH GSI; Cole Ben DOH GSI; Moira.Protani@GRO-C  
Subject: Fw: Caxton Foundation [IWOV-LIVE.FID538863]

Justine

As Graham's boss, can you give this the legal once-over, please, and let Moira know? Ailsa and Rowena will need also to signal contentment with the charitable scope. (Ben is on leave.)

Jonathan Stopes-Roe  
Deputy Director, Legislation & Environmental Hazards  
Health Protection Division  
Department of Health  
Wellington House

**GRO-C**

----- Forwarded by Jonathan Stopes-Roe/HP-SL/DOH/GB on 03/06/2011 13:21

"Moira Protani"  
<Moira.Protani@**GRO-C**>  
**GRO-C** >  
To Ben Cole/HP-SL/DOH/GB@**GRO-C**  
03/06/2011 12:45  
cc Jonathan  
Stopes-Roe/HP-SL/DOH/GB@**GRO-**  
Subject FW: Caxton Foundation  
[IWOV-LIVE.FID538863]

Ben

I gather that you have assumed responsibility for the work previously undertaken by Debby Webb who has now moved from her post.

I have sent an email to Graham Kent in legal services (below) but understand that he is on holiday until 13 June. This matter requires to be dealt with urgently and I am unsure to whom it should be sent in Graham's absence. I would be most grateful if you would arrange for this request to be re-routed to someone else in the legal department.

Kind regards and thank you for your assistance.

Moira Protani  
Partner  
Wilsons Solicitors LLP

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From: Moira Protani  
Sent: 03 June 2011 12:40  
To: 'Kent Graham LEGAL GROUP DH LEGAL SERVICES'  
Subject: Caxton Foundation

Graham

I believe that you are aware that it has become necessary to make changes to the objects of the Caxton

Foundation in order to permit CF to provide accommodation and services for free to the Macfarlane Trust, the Eileen Trust and other associated bodies. Further amendments may be required in due course to admit individuals in the devolved administrations but that will be dealt with in a separate deed when required.

I attach a draft deed of amendment of the Caxton Foundation's trust deed and would be grateful for your comments, if any. Subject to this, I will prepare a final version for signature by the parties. Discussions concerning an assignment of the fifth floor of Alliance House are at an advanced stage. However, CF cannot become the tenant of premises which are intended to be shared with MFT and ET until its objects have been widened. You will appreciate that the additional space available on the fifth floor is only a viable proposition for CF if it has the power to share with the other bodies and to provide them with ancillary administrative services and staff

Accordingly, your urgent consideration would be appreciated so that we can begin the process of restructuring CF, MFT etc.

Kind regards

Moirá Protani

Partner

Wilson's Solicitors LLP

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.(See attached file: 4027159\_1\_Deed of Amendment.DOC)