

Business and non business activities

The High Court has supported the decision of the VAT Tribunal in St Paul's Community in deciding that the operation of a nursery by the charity constituted a non business activity, notwithstanding the relatively high fees charged to parents.

Customs had sought to distinguish St Paul's from the *Yarburgh* case for several reasons, namely that one was a nursery and the other a play group; that the former was run by a committee that did not really involve parents whereas the other was run by a committee of parents and that St Paul's charged fees substantially higher than those charged by the Yarburgh playgroup. The judge discounted all these points. What swayed him were the social reasons behind St Paul's activities in that the service was primarily to support disadvantaged children from problem families. Also the fees were lower than those of commercial nurseries and set to ensure the body broke even after taking account of grants and donations, and even if it had made a profit, it could not have distributed it. The reason for the fees being more than just a token amount was the high level of salaries St Paul's had to pay, because it employed highly qualified staff which it needed because of the high number of problem children it took.

The judge recognised that a charity could well be involved in business activities (such as the running of a shop to raise funds for its charitable purposes) but that it was the **intrinsic nature** of the enterprise that was key to its treatment for VAT.

It seems that with each case like this we move further away from Customs' original opinion that anything done by a charity for a fee must by default be business. Customs also made a strong point about distortion of competition, in that St Paul's achieved zero rating whereas a commercial nursery would not, and this offended tax neutrality. The judge was not convinced.

This analysis of what constitutes a business activity by a charity, and what does not, may well be relevant to the current debates surrounding whether the supply of education by Universities and social housing by Registered Social Landlords is a business activity.