



Hewitsons Charities & Education

LEGAL UPDATE

Absolute Client Focus

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Government gives partial comfort on EU funding for aid charities post Brexit

The UK government has recently published a 'technical notice' setting out how it will assist UK aid and development organisations if the UK leaves the EU with 'no deal'. British charities with existing EU grants seemed likely to be faced with a tough choice between terminating projects early or abruptly or financing the remainder of the programme themselves. However, the Government has now pledged to guarantee EU projects agreed before we leave the EU to ensure they continue to receive funding for the lifetime of the project. There is already considerable concern about proposed caveats to this pledge and it should not be seen as a blanket guarantee of funding. There will be separate technical notices on a range of funding programmes over the coming weeks and months.

Reclaim social media for good #ReclaimSocial

Tech-for-good platform 'Lightful', initiated the #ReclaimSocial movement with their message 'The time has come to reclaim social media for good'. This inspired thousands of not-for-profit organisations to take to Facebook and Twitter calling for more positivity on social media. Charities have huge potential to promote their causes through social media as supporters share messages with the aim of achieving charitable goals. Charities might feel encouraged by the #ReclaimSocial

campaign to use social media not just to raise awareness of their cause but also to 'speak up and speak out' about related issues.

As well as the social benefit opportunities to promote your charity, social media also comes with legal responsibilities relating to privacy, cookies, GDPR and legal status. The use of social media can both enhance and damage a charity's reputation and risk management is key.

A new generation of givers - Socially-conscious rich millennials & women

According to the Sunday Times Giving List, the super rich donated £3.2 billion over the last year and the majority of them have made, rather than inherited their wealth. They are not tied to a family tradition of donating to a particular charity and are open to a wider range of causes and ways of donating, for example giving their time and expertise.

However those benefiting from inherited wealth should not be forgotten because a key emerging group over the coming years is forecast to be the children of self-made entrepreneurs, who will in turn become the next generation of philanthropists.

The Sunday Times Giving List also showed that women are an increasingly important philanthropy group. Traditionally, they have been a driver of philanthropy through their husband's money. With more women now earning their own money, we will start to see an increasingly influential demographic in major donor fundraising.

1 April 2019 countdown to making charity VAT digital

From 1 April 2019, all VAT registered businesses, including charities and social enterprises, with a taxable turnover above the VAT threshold (currently £85,000) must keep business records digitally and submit VAT returns using Making Tax Digital (MTD) software.

Data protection: toolkit for schools

The General Data Protection Regulation (GDPR) came into force on 25 May 2018. This toolkit, published by the Department for Education in August, provides guidance for schools to help develop policies and processes for compliant data management, including collecting and handling data and ways in which schools can respond quickly and appropriately to any data breaches. At 102 pages, it is not a light read, but does contain a number of helpful examples and advice and is therefore likely to be worth the investment of effort to look through it.

Safeguarding

The Charity Commission has updated its [guidance](#) on safeguarding. It continues to emphasise that safeguarding 'should be a key governance priority for all charities, not just those working with children or groups traditionally considered at risk, regardless of size or resources'. Trustees are required to take reasonable steps to safeguard and protect all beneficiaries, staff, volunteers, those connected with activities of the charity and who come into contact with the charity, from abuse and maltreatment of any kind. It is important to note that whilst 'actions' may be delegated, responsibility remains with the trustees, so it is indisputably the trustees who must take responsibility for this area.

The Commission's injunction, that 'all' charities must treat safeguarding as a key governance priority, is however somewhat misleading in its simplicity. There are charities which have no contact with children, no employees and only the trustees as volunteers: safeguarding will have limited impact for such a charity. Nevertheless, the emphasis on safeguarding for charities is clear

and all trustees must address this in whatever detail may be appropriate for their circumstances. Regular reviews of policies, risk management, practical steps, continual awareness and monitoring, and reporting are therefore now an absolute necessity.

R (on the application of (1) KE (2) IE (3) CH v Bristol City Council [2018] EWHC (Admin) 2103

Bristol CC's decision to reduce its special educational needs budget by over £5million has been overturned after a successful judicial review brought by families affected. The Local Authority in this case reduced the budget for special educational needs without consultation and was thus found to be in breach of its public sector equality duty (s.149 Equality Act 2010) and its duty to keep education and care provision under review and consult children, young people and their parents when doing so (s. 27 Children and Families Act 2014). The decision to reduce the budget was made despite its draft corporate strategy identifying that achievement gaps for disadvantaged children in the city were high and widening, resulting in children with special educational needs not achieving their potential.

The implications of this case are such that local authorities must pay close attention to what the judge described as the 'heavy burden' of their wide ranging duties. Budget cuts are not simply a matter of balancing the books, but encompass far wider concerns and legal responsibilities.

The opportunities of the trustees' annual report

The Charity Commission in its latest monitoring reviews of charity trustees' annual reports and accounts, revealed an improvement in the quality of public reporting. 51% of the charities reviewed demonstrated a clear understanding of the public benefit reporting requirement €“ a 5% improvement since last year, although evidently there is still a huge awareness gap in the sector, since 49% did not demonstrate this!

A charity's annual report can play a key role in providing transparency, enabling the public to understand exactly what a charity does and how their donations are being used. The Commission urges charities to recognise that completing the annual return provides a huge opportunity to keep their supporters in the loop of how they are using supporter funds for the good of their beneficiaries. The public benefit statement is highlighted as a vital tool in explaining to the general public exactly what a charity does to achieve its charitable aims.

The Informed Trustee

Co-written by our Head of Charities and Education, Chris Knight, The Informed Trustee was launched in August.

Published and hosted by the Society of Trust and Estate Practitioners, The Informed Trustee is a new on-line course designed for current and new trustees to build their knowledge and understanding of the governance requirements of charity trustees. The content covers all UK jurisdictions and is endorsed by Edinburgh Napier University and supported by the Charity Finance Group.

This is likely to become an invaluable tool for trustees as they seek to be as effective as they can for the charities they serve.

Trustees and senior managers disqualification: new rules

New rules were introduced on 1 August 2018 concerning disqualification of trustees, widening the grounds and now also applying these to senior manager positions.

Guidance for charities working internationally

The Charity Commission launched a survey in the spring to establish whether their guidance met the needs of those charities working internationally. Overall, the majority who provided feedback said that the guidance was useful, clear and relevant. The survey also revealed the main risks faced by charities working internationally and concluded that most of these risks had been covered in the [Commission's compliance toolkit](#).

The main risks for charities working internationally were identified as compliance and operational risks, particularly reputational damage, corruption in foreign countries, poor behaviour / management of partner organisations working remotely and safeguarding. Most of these are dealt with in the toolkit and the Commission is keen therefore to raise awareness of the guidance.

Event Invitation - Charities Forum



Our Charities Team is holding its next series of forums this Autumn. Through these forums our charity law experts will guide you on important issues exploring how better to engage with your target audience and grow your charity's income for your beneficiaries. During the seminar we shall be discussing areas including intellectual property, sponsorship and trading as well as the commitment to mission and reputational standing.

The forums are free to attend and will run from 4.00pm - 6.30pm at the following locations:

London - 3 October
Northampton - 11 October
Milton Keynes - 17 October
Cambridge - 13 November

Should you wish to attend then please contact our events team at events@hewitsons.com

For more information about the articles covered in this update please contact our [Charities & Education team](#) or contact Chris Knight on 01604 463103, or alternatively contact Virginia Henley on 01604 463345.

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Reg No: OC33469

