



Hewitsons Charities, Education and Social Enterprise

Legal Update

July 2020

Welcome to our latest update which we hope you will find useful and interesting. We have been in touch with many of you during the last few difficult months and have been impressed and inspired by the tenacity of our clients. Certainly, one of the positive things to have come out of this year is the dramatic increase in people volunteering their time to charities and you can read more about that below. We hope that many of you will join us for our online Charity and Employment Seminar on July 9th. Catch up on the latest guidance for the sector from the comfort of your own home! More details below.

If you are worried about the impact of the Coronavirus upon your charity and wish to seek advice on the matter, please do not hesitate to [contact us](#).

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Charities & Employment Seminar - 9th July 2020

On 9th July between 11am and 12pm our Charities, Education and Social Enterprise team will be hosting an interactive, virtual seminar to support you in keeping up-to-date and legally compliant – essential hallmarks for any well-run charity. [Virginia Henley](#) will provide a round-up of the very latest Charity Commission decisions and guidance while Partner and employment law Solicitor [Nick Hall](#) will provide an update on employment law changes which will affect all charities with employees this year.

This seminar will be taking place online via Zoom. Should you wish to register to attend this seminar please contact our events team by [clicking here](#).

Reporting serious incidents to the Charity Commission during the coronavirus pandemic

Many charities will be facing very significant challenges as a direct result of the current pandemic. The question is whether they are so serious as to warrant a report to the Charity Commission. The Commission has produced guidance to assist charities struggling to know whether they need to make a report. There is now a table which sets out common incidents arising during the pandemic and divided into 'do and don't report' examples.

Whilst the Commission's [guidance on serious incident reporting](#) (SIR) continues to be the main resource for helping trustees to decide whether or not to report, the pandemic has given rise to some unprecedented challenges and scenarios that were not envisaged when the guidance was published.

Key points for trustees to consider include:

- **The closing of premises:** - this does not necessarily need to be reported. It is the impact of this action on the charity that is key to determining if it should.
- **Thresholds for financial losses:** - in normal circumstances, charities should report any financial losses that don't involve a crime where they exceed either £25,000 or 20% of a charity's income. However, these thresholds do not apply when considering financial losses that are related to the pandemic.

When deciding how to respond to the SIRs they receive, the Charity Commission says it will continue to prioritise those that indicate individuals are at risk or that there is a risk of serious harm to a charity's ongoing work.

If you require further information and advice on serious incident reporting, please contact a member of the [Charities, Education & Social Enterprise team](#).

Under the bonnet of the Charity Commission

The Digital, Culture, Media and Sport Select Committee is undertaking an inquiry into the work of the Charity Commission. In response to questions posed by the Committee, the Commission has provided details of its current workloads and priorities.

To read more about this, please [click here](#).

Charity Commission finds Prince Andrew's charity trustees breached charity law over payments to trustee

During the extensive media coverage of the Duke of York in winter 2019, it was found that a former trustee of the Prince Andrew Charitable Trust was paid by the charity's three trading subsidiary companies as a director of those companies.

Upon investigating the matter, the Charity Commission commented upon the following points, which we think are important to note:

- Trustees cannot be paid to act as a director of a subsidiary company, unless there is authority from the charity's governing document, or the payments are authorised by the Commission or the court. No authority was present in this case to allow the payment.
- Trustees have a duty to act with reasonable care and skill, taking account of any special knowledge, skill or professional status. This board of trustees, which included a lawyer, was expected to have had the knowledge and experience to act in accordance with charity law.
- The need for a more pro-active management of conflict of interest: there were no proper records to show adequate conflict of interest checks for payment of trustees during trustee meetings. There was also no stand-alone conflict of interest policy in place, no open and fair competition conducted before the role at the subsidiaries was given to the trustee, and no evidence provided showing that those payments to the trustee held value for money for the charity.

The current trustees rectified the matter in collaboration with the Charity Commission and £355,297 was returned after the Charity Commission found the charity breached charity law. The funds are to be redistributed in line with the charity's purposes. It was subsequently decided that the charity will be wound up.

Threefold increase in people volunteering for charities during pandemic, figures indicate

Reach Volunteering said 2,100 new people registered to volunteer on its site between April and May, compared with 750 people in the same period last year. With a weekly average of 240 new applicants, compared to 83 a week last spring, the rate of sign-ups is three times higher.

Reach connects volunteers who have at least three years' experience in their field of expertise with roles posted by charities on its digital platform. There is no charge for volunteers to register or apply and the service is free for charities to use in most instances.

As well as the upsurge in the number of volunteers offering their help, Reach said it had seen a surge in small and medium-sized charities calling on it for advice in areas such as transferring face-to-face services online.

Janet Thorne, chief executive of Reach, said the shock of the coronavirus outbreak could have a lasting positive effect if it meant charities were more willing to access skilled volunteers to help them through challenging times.

Volunteering for charity retail shops

The Charity Retail Association has launched an initiative to help match potential volunteers with charity shops when they reopen. Those interested in volunteering can [sign up here](#). Volunteers will be matched based upon their location and specific charity interest.

Change.org announces \$6m fund to support racial justice campaigners after criticism

Change.org has announced plans to divert millions of dollars to support racial justice campaigning, days after former staff in the UK joined criticism of the company.

The criticism came after the petitions website faced [accusations](#) last week that people making donations through the site were misled into thinking their money would go to charities when it actually went to the company. The accusation focused on two petitions demanding justice for George Floyd and Breonna Taylor, both of whom were killed in incidents involving police in the US. Anyone signing the petitions was invited to "chip in" with a donation along with their signature.

Nick Allardice, acting chief executive of Change.org, said that more than 800,000 people made donations when they signed the two petitions, raising a total of \$9.9m (or just under £8m). Some \$6m (£4.8m) from these donations will now be invested in supporting campaigns for racial justice, through funding BAME-led organisations and grassroots community organisers. Allardice said, of the remaining money, \$1.5m will be spent on establishing a team at Change.org working exclusively on social justice campaigns, and \$2.5m will be re-invested into the company's promotional work.

The company said that it plans to take a "similar approach" to future petitions which reach 100,000 signatures.

Charity coalition calls for temporary rise in Gift Aid rate

A coalition of major charities and umbrella bodies has urged the government to increase temporarily the rate of Gift Aid which not-for-profit organisations can claim in a bid to provide a £450m boost to the sector's finances.

The group is asking the government to increase the effective amount of Gift Aid that charities receive on eligible donations from 25 percent to 33 percent for the next two years, in a move that would help alleviate the shortfall many charities are facing because of the coronavirus outbreak.

The organisations estimate that the increase would be worth an additional £450m to the sector over the next two years.

The coalition is being led by the Charities Aid Foundation, the Institute of Fundraising, the Charity Finance Group and the Charity Tax Group, and includes support from major charities such as Cancer Research UK and the British Heart Foundation.

Charities can consider restarting public fundraising if it is safe, new guidance suggests

Charities can return to public fundraising if they judge it to be safe, new guidance published by the [Fundraising Regulator](#) and the [Institute of Fundraising](#) suggests.

The guidance warns that charities are unlikely to be able to return to business as usual just yet and says they must ensure social distancing is observed. It goes on to say that "fundraising should only restart when fundraising organisations are satisfied that this can be done safely, in line with government advice and where the risks associated with the activities can be properly managed", and calls on organisations to undertake full risk assessments first.

Priya Warner, head of policy at the Fundraising Regulator, said the guidance was intended to support the sector as it looked to resume fundraising activity, However she added: "It's the responsibility of individual charities to exercise judgement about when and how to resume fundraising, and this should only be when thorough risk assessments have been carried out and informed decisions based on each individual organisation's unique circumstances have been made".

If you have any particular concerns relating to your charity, whether because of the Pandemic or otherwise, please contact our [Charities, Education and Social Enterprise Team](#).

This Legal Update is produced by Hewitsons LLP for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area. Advice should be sought from a solicitor in the appropriate specialist team at Hewitsons in respect of any information contained in this legal update that affects any matter with which you may be concerned. While the articles and opinions expressed in this publication are summations of current general legal matters the firm can take no responsibility for their application to specific situations in which specialist advice is required.

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