



# Hewitsons Charities, Education and Social Enterprise

Legal Update

March 2020

Following the outbreak of the Coronavirus we find ourselves in an unprecedented situation and of course this was something for which no charity could have prepared. The Charity Commission has provided guidance which aims to help charities during this difficult period. The [guidance](#) includes reference to the announcement made by the government that organisations including charities will get support to pay wages, further information on this can be found [here](#).

The Charities SORP making body has also issued new [guidance](#) which is intended as a guide rather than as a directive. The guide states that when preparing accounts that have not yet been approved, “trustees should consider whether information needs to be included to explain the impact of the Covid-19 situation on their charity”.

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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## Charity trustees and decision making

Trustees are constantly making decisions on behalf of their charities, but how many are aware that when making these decisions, a set of principles must be taken into consideration? The courts and the Charity Commission have developed a set of principles for when they review significant or strategic decisions made by trustees.

The principles can be found [here](#), and they state that trustees must:

- act within their powers;
- act in good faith and only in the interests of the charity;
- make sure they are sufficiently informed;
- take account of all relevant factors and ignore any irrelevant factors;
- manage conflicts of interest; and
- make decisions that are within the range of decisions that a reasonable trustee body could make.

Trustees must know how to make decisions effectively and be ready to be accountable to their stakeholders. Following these principles of decision-making will help trustees to act within their powers and charity law and protect trustees if something goes wrong. We would encourage all trustees to familiarise themselves with them, especially given that in the current situation many difficult decisions may need to be made.

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## Trading subsidiaries of charities: what to consider

It is common for charities to set up trading subsidiaries when they wish to carry out non-primary purpose trading – that is, trading that is not in direct pursuance of the charity's objects. For example, we often advise clients who set up a trading subsidiary in order to run a charity shop.

Once a trading subsidiary has been set up, it is vital that clear boundaries are maintained both in practice and 'on paper' between the parent charity and its trading subsidiary. In particular, it is crucial to avoid the situation where charitable resources are used for non-charitable purposes and we regularly advise charities that need an agreement between the two entities to maintain this independence and clarify the working relationship.

Trading profits and Gift Aid will also need to be considered, because one of the main reasons for setting up a trading subsidiary is to generate funds. A trading subsidiary can donate its profits to its parent charity and claim Gift Aid tax relief on the donation, if it is liable for corporation tax.

If you require further information and advice on this, please contact a member of the [charities team](#).

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## Charity Enquiries: The need for adequate management

The importance of good management of charities has recently been illustrated in a series of Charity Commission enquiries.

One recent example included the case of a Christian charity where:

- The charity failed to file accounts for two consecutive years.
- The Charity Commission followed this up and found there appeared to be no Trustees (all claimed to have resigned).
- An administrator was managing things and intended to merge the charity with another, but this had never happened.

A case like this acts as a reminder that charity trustees are responsible and accountable for the overall management and administration of the charity, and this should not be left to individuals – they cannot simply resign and hope for the best without finding new trustees or closing down the charity. It is important that trustees comply with statutory accounting and reporting requirements to ensure accountability and compliance with the law.

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## Charity loses nearly £1m after 'sophisticated cyber fraud'

A housing charity was recently targeted by cybercriminals and lost nearly £1m. The charity said that criminals 'mimicked the domain and email details of known contacts that were providing services to the charity. 'Through this

they managed to recreate an email thread that misled those who were copied into the email that it was a genuine follow up to an existing conversation.'

The details have been passed to ActionFraud and the police are investigating. It was noted that no customer data was put at risk. The charity has now strengthened its processes and worked to minimise the impact of their loss.

Unfortunately charities, like any business, are not immune to criminal abuse from fraudsters. Fraud poses a serious risk to valuable funds and sensitive data. As part of Charity Fraud Awareness Week 2019, a document produced by the Charity Commission, providing 8 guiding principles for tackling charity fraud was produced and can be found [here](#).

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## Charity Commission's investigation into whistleblowing highlights its own flaws

The Charity Commission is currently looking into a complaint about the Alzheimer's Society which it failed to respond to in 2018, after details were reported on the front page of the Guardian. The complaint centres around £750,000 of pay-outs to staff who agreed to sign non-disclosure agreements. The suggestion made was that the non-disclosure agreements may have been used to silence staff accusations about bullying.

Whilst the Charity Commission is now investigating the report, it highlights the unfortunate point that the Charity Commission failed to follow up on the complaint at the time it was reported.

Helen Earner, director of operations at the Commission said: "Whilst this was at a time when the volume of cases coming into us was high, nevertheless we should have followed up on the complaint, and that did not happen. We have since overhauled our handling of whistleblowing reports. Regardless of the nature or seriousness of concerns raised, we follow up each whistleblowing report with a phone call to the complainant."

As stated, the Charity Commission has improved its system of handling complaints. For example it launched a dedicated whistleblowing advice line in June 2019 and also recently updated their whistleblowing guidance, found [here](#).

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## Good Work Plan changes taking effect on 6 April 2020

A number of changes set out in the government's Good Work Plan, published in December 2018, will come into effect on 6 April 2020. It forms part of the Government's drive to ensure that both employers and workers have clarity on the employer/employee relationship.

Check out our special Employment Update on this [here](#) to understand the impact it will have on charities and their employees.

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## Government launches charity safeguarding portal

The government has recently launched a new online portal to help charities manage safeguarding concerns and allegations.

For further information on this, please read our article on this [here](#).

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## Hiring workers from overseas – how will it look post-Brexit?

Charities have raised their concerns about the new immigration points-based system for awarding visas, due to be introduced post-Brexit. In particular the social care labour market stated that these changes could create instability and could be catastrophic.

For further detailed information on the new proposed system and the impact it will have on the charity sector, please read our article [here](#).

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