



# Hewitsons Charities & Education

2019 September Update

Absolute Client Focus

September 2019

**Welcome to our latest update on news items which we hope will be of interest to all our charity, education and social enterprise clients.**

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## Our London Charity Seminar



**Charities in a world of risk**  
Thursday 26th September 2019

## *Navigating a charity through operational risks, cyber threats and governance challenges*

Charities face so many challenges and potential risks that sometimes it can be hard to remain effective and focused on their cause. Join us as we hear from experts in managing these risks, and share your experiences with other senior charity professionals

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Speakers will cover the following topics:

**The reason for success or failure: Governance Challenges.** Chris Knight, Head of Charities at Hewitsons and trustee of Mission Direct.

**Finance and operational risk: the heart of the matter.** Amanda Francis, Charities Partner at Buzzacott and trustee of Royal Star and Garter Homes.

**Cyber threats: a very modern problem.** Danny Steed, Head of Strategy at ReSolve Cyber.

To keep up to date on all our forthcoming seminars and events please visit [www.hewitsons.com/events/latest](http://www.hewitsons.com/events/latest)

### **Timings**

Registration for the event starts at 16:30 with the seminar beginning promptly at 17:00. The seminar will conclude after a Q&A panel at 18:30.

Drinks and Canapés will be served after the Q&A.

### **Venue**

Hewitsons LLP  
Kildare House  
3 Dorset Rise  
London  
EC4Y 8EN

### **RSVP**

To reserve a space at the event please RSVP before the **16th September** by contacting our events team at [events@hewitsons.com](mailto:events@hewitsons.com) Please note that due to venue capacity spaces are limited therefore early acceptances are advised.

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## **Trusteeship opportunities**

We are often asked if we know of anyone suitable to be trustee of a charity. We currently know of two such opportunities for example for a youth charity and an arts charity, both based in Northants. If you or anyone you know might be interested to know more about these roles, please get in touch with [Chris Knight](#).

## **NCVO Charity Tax Commission report published**

The last comprehensive government review of charity taxation and reliefs took place over 20 years ago, and the sector has changed dramatically since then. Therefore in October 2017 the National Council for Voluntary Organisations (NCVO) established an independent Charity Tax Commission to undertake a full review of the impact of the tax system on Charities. The report, published in July 2019, made the following recommendations (amongst others):

### Gift Aid

- Unless donors opt out, the value of additional and higher-rate tax reliefs should be directed to charities.
- A Universal Gift Aid Declaration Database (UGADD) should be launched, to enable donors to make a single declaration covering all their subsequent gifts to charities.

## VAT

- Removal of VAT from wills that include a charitable donation.
- Comprehensive review of VAT for charities which could address systemic anomalies, improve efficiency and increase charitable activity.

## Business Rates Relief

- A long term review of business rates relief looking at both the equity of distribution and the extent to which this relief is generating public benefit.

## Trading subsidiary companies

- Charities should be able to conduct all trading, even if non-charitable, within the charity without the need to set up a separate trading subsidiary.

Sir Nicholas Montagu, chairman of the Commission said that the "recommendations could help bring the tax treatment for charitable giving into the 21st Century and result in a huge increase in the amount of money available for good causes".

## **Charity Commission concern over quality of charity accounting**

A new study by the Charity Commission has found that only half of charity accounts reviewed met its benchmark. A sample of 296 charities' accounts were assessed against the benchmark which ensures that the basic requirements have been met. Accounts reviewed by an auditor (44%) met the benchmark more frequently than those reviewed by an independent examiner (18%).

Nigel Davies, Head of Accountancy Services at the Charity Commission, said it is "vital that charities are able to provide an accurate and clear picture of their finances. It is so disappointing that so many independent examiners and auditors appear to lack the necessary understanding of the external scrutiny framework." The Commission has already contacted 135 charities that failed the benchmark test and provided guidance to help them improve the quality of future trustees' reports and accounts.

The benchmark test may be accessed [here](#).

## **Failure of property transactions: David Roberts Art Foundation Ltd v Riedweg**

The charity in this case sought to enforce a contract for the sale of its land. The purchaser argued the contract was invalid, claiming it was not compliant with the Charities Act 2011. Specifically, there was no statement in the contract as required by s.122(2) of the Act, which is a provision designed to ensure that the trustees have taken steps to make certain that the contract is in the best interests of the charity. The High Court held that these were minor failures and parliament could not have intended that omitting such a statement would result in an invalid contract. Crucially, the terms of the sale were the best the charity could reasonably obtain. The contract for sale was therefore upheld.

By contrast, in the earlier case of *Bayoumi v Women's Total Abstinence Union Ltd* [2005] the charity trustees obtained surveyors' advice which did not comply with s119 Charities Act 2011: the sale was held to be void. This was because the trustees failed to take *any* steps to comply with the requirements and further did not satisfy the conditions which would allow them to rely on the statutory power. The contract for sale therefore failed.

It is always our advice that trustees take great care to comply with the provisions of the Charities Act

2011 affecting land transactions. We regularly advise on these to ensure that the contract is fully compliant and in the best interests of the charity. Please [contact us](#) if you would like further guidance.

### **Trustees' conflicts and governance shortcomings, a warning!**

Two separate statutory inquiries have been opened by the Charity Commission into the Jalloh Charitable Trust and The Deacons Charitable Trust whose aims are to further general charitable purposes through grant-giving. The initial stages of the investigation have found that the trustees of the Jalloh Charitable Trust were also the Trustees of Deacons Charitable Trust and that they were related through marriage. The Commission is currently investigating whether there has been an unmanageable conflict of interest and whether, as related trustees, they have made key decisions in the respective best interests of the charities. Further potential misconduct that has come to light includes failure to submit annual accounting information, loans of over £500,000 to a trustee and purchasing of valuable antique silver. The Commission has taken protective action, frozen the bank accounts and issued instructions that the trustees are not to part with any property of the charities without the Commission's consent.

Trustees of grant making charities should always take care to avoid connections between trustees and transactions that could give rise to a potential conflict. If you would like further advice on how to manage conflict, please get in touch with the [Charities and Education team](#).

### **Call to remove the need for trading subsidiaries**

Charity umbrella bodies are calling for a change to the UK's tax regime to allow charities to undertake all trading without having to set up a subsidiary company. The paper put together by Crowe accountants suggests that it is now time to rethink whether it is worth the administrative and financial burden for a charity to have a separate trading subsidiary. The argument put forward is that most charities do not pay tax on trading income even if they are large and fall outside primary purpose trading exemptions because they gift aid their profits to the parent charity. In this situation, no tax is being collected by HMRC but charities still have to rely on professionals to help them navigate the complex arrangement which ultimately becomes a cost to the charity.

The recommendation being proposed is to allow charities to undertake all trading within the charity, without the need for a trading company and without tax liability. The report further suggests that a compromise would be to remove the capped allowance on the small trading exemption and permit charities to trade *providing* their income does not exceed 25% of their total income. The report's recommendations have been discussed with NCVO's Charity Tax Commission, which we report on above.

If you would like to discuss or require advice on your trading subsidiaries, please contact the [Charities and Education Team](#).

### **Expansion of powers for the Office for Students**

Established in 2018, the Office for Students (OfS) is the independent regulator of higher education in England. It has recently been given increased powers to impose financial penalties of up to £500,000 or 2% of a university's income (whichever is the greater) if the institution fails to act in the best interests of its students and taxpayers, for example through grade inflation or the granting of unconditional offers.

It is a requirement for universities who wish to charge higher tuition fees to submit to the OfS an 'access and participation plan' setting out how they will improve equality of opportunities for underrepresented groups. Under its wider powers, the OfS may now reject a new plan when a current

one expires. If an institution's plan is not approved, the tuition fee that it charges could be capped at a lower amount.

### **Five ways charities can prepare for Brexit**

The Charity Commission, together with the government's public information campaign, has put together 5 areas in which charities can prepare for Brexit:

1. If you employ EU staff or have EU volunteers:  
The good news is the government has committed to safeguarding the rights of EU nationals residing in the UK providing they apply for the EU Settlement Scheme to continue living in the UK after 30 June 2021. Certain nationals for example, Irish citizens or those who have indefinite leave to remain may be able to stay without applying for the Scheme. Therefore, charities with European staff should try and ensure proper support is in place and be in a position to provide advice in what could be a stressful and uncertain time.
2. If you receive EU funding:  
The UK will continue to take part in all EU programmes for the duration of the Multiannual Financial Framework 2014-2020. In the event of a no deal Brexit, the government will guarantee the funding of projects which had been agreed with the EU before the UK's leaving date.
3. If you receive any personal data from the EU:  
Organisations must continue to ensure that they are GDPR compliant. If your organisation receives personal data from the EU/EEA, you should review contracts to ensure that your organisation can continue legally to receive personal data from the EU/EEA.
4. If you import or export goods from the EU:  
It is essential that you read the government guidance on this so that there is (at least a chance of) a smooth transition. The advice may be found [here](#).
5. Customs, excise, VAT and regulatory changes:  
Again, the government has prepared detailed guidance about how stakeholders may be ready in the event of no deal. This may be accessed [here](#).

### **Our second annual Trustees Week celebration in collaboration with Voluntary Impact Northamptonshire**

We are delighted to announce that we shall once again be holding a free event in our Northampton offices to celebrate the amazing work of trustees involved with charities locally. There will be a buffet lunch, interactive sessions, legal updates, expert panels and much more. All trustees are welcome, and if you are interested please book your place as soon as possible as last year there was standing room only!

**THANK YOU!**  
*For being a* **TRUSTEE**

Join us for lunch and an afternoon to  
celebrate you

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Wed	<b>6</b>	12:15-	Hewitsons
	Nov	16:30	Solicitors

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Billing Rd, Northampton,  
NN1 5AU

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Get your trustee goodie bag!

To book your place [click here](#).



This Charities & Education Update is produced by Hewitsons for existing clients of the firm to provide them with a useful summary of recent cases, journal reports 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 Charities & Education Team at Hewitsons in respect of any information contained in this update that affects any individual matter with which you may be concerned.

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