

CHARITY TRUSTEES WEBINAR SERIES

Welcome

Charity Trustees legal update webinar: Part one

SH ∞ SMITHS

CHARITY TRUSTEES WEBINAR SERIES

Your hosts

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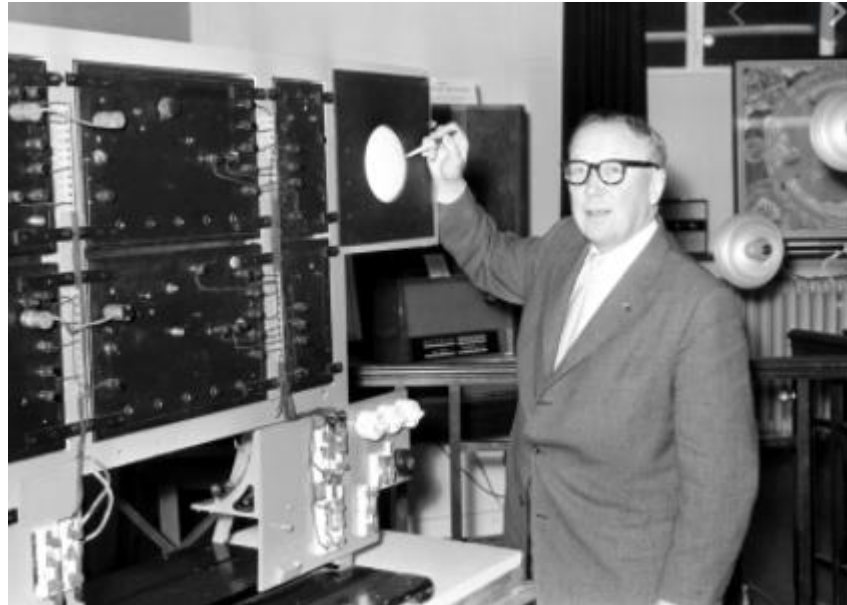


Purpose of this session

- *“Learn five things in 30 minutes to strengthen your charity in 2021”*

Purpose of this session

“Perfect is the enemy of good”



Charity Commission business plan 2020/2021

- *What success will look like*
- *By 2021, it will be easier for people to do business with us– improvements to the website will have been made, and we will have redesigned and published the most important and relevant pieces of guidance, improving the tools that charities need to deliver. For the public, we will have developed a better, more adaptive, view of the register to make it easier for people to use and to find the information about charities that they are looking for.*
- *We will have launched a campaign to inform trustees about the most important issues they need to focus on in order to place their charities in the best position to be effective in delivering their purpose and compliant with charity regulations. We will be better at contacting them in a timely way, with the information they need.*

Charity Commission business plan 2020/2021

- *Key tasks*
- *deliver improvements to our website which make it easier for people to find the information they need*
- *update 25% of guidance to make it more targeted and relevant for Trustees, with outdated and unnecessary guidance removed*
- *deliver a campaign that helps Trustees focus on four important issues in delivering their charitable purposes*
- *deliver quarterly publications that reflect our research and casework*
- *deliver improvements to better manage our mailing processes*

5-minute guides for charity trustees

- Purpose
- Finance
- Conflicts of interest
- Decisions
- Support

1. Charity purposes and rules

- Use your charity's governing document
- Focus on your charity's purposes
- Public benefit
- What else your governing document says
- The law

Charity purposes

- You must deliver only your charity's purposes.
- Keep asking yourself if you are fulfilling your charity's purposes.
- Using charity funds or resources on other purposes is very serious. Trustees may have to repay the charity from their own money.
- Keep your charity's purposes under review

Coronavirus (COVID-19) guidance for the charity sector (07.04.20)

- *Charity objects: understand if you can help with coronavirus efforts*

Charity purposes

- Acting outside your purposes?
- Fulfilling/ prioritising your purposes?
- Changing your purposes?

Acting outside your purposes?

- CC regulatory compliance case: National Rifle Association (February 2020)
- Runnymede Trust (April 2021):
 - THE CHARITY'S OBJECTS ARE THE PROMOTION BY TEACHING, LECTURING OR OTHERWISE FOR THE BENEFITS OF THE PUBLIC OF:- [A] STUDIES IN POLITICAL, ECONOMIC, SOCIAL AND NATURAL SCIENCES, THE HUMANITIES AND OTHER SUBJECTS OR DISCIPLINES SUITABLE FOR EDUCATION; AND [B] THE STUDY AND DISSEMINATION OF KNOWLEDGE OF PROBLEMS AND CONNECTED WITH ETHNIC, RELIGIOUS, RACIAL, NATIONAL OR OTHER SIMILAR GROUPS IN ENGLAND OR ELSEWHERE (HEREINAFTER REFERRED TO AS "THE RELEVANT GROUPS") AND THEIR EFFECT UPON THEIR ENVIRONMENT.
 - The Trust joined the Good Law Project to challenge the process of appointing three key figures to combat Covid-19 (Dido Harding, Kate Bingham, Mike Coupe) because the positions were not advertised and are unpaid, the government was guilty of indirectly discriminating against others outside the very well-off, predominantly white group from which the three were chosen. They also say the government breached equality obligations for public sector appointments.

Fulfilling/ prioritising your purposes?

- CC regulatory compliance case: St Margaret's Somerset Hospice (January 2020)
- The Royal College of Physicians of London (October 2020-January 2021)
- *"Eton could reap £120m in land sale."* The Daily Mail 24.04.21
- CC regulatory compliance case: The National Trust (March 2020)

Fulfilling/ prioritising your purposes?

- THE KYNGE'S COLLEGE OF OUR LADYE OF ETON BESYDE WINDESORE:
- A. THE ADVANCEMENT OF EDUCATION BY THE PROVISION, SUPPORT AND CONDUCT OF A SCHOOL KNOWN AS ETON COLLEGE AND BY ANCILLARY OR INCIDENTAL EDUCATIONAL ACTIVITIES AND OTHER ASSOCIATED ACTIVITIES (INCLUDING THE CONDUCT OF SERVICES IN ITS CHAPEL OR CHAPELS) FOR THE BENEFIT OF STUDENTS (BEING PERSONS ENROLLED ON A COURSE OF STUDY PROVIDED BY ETON COLLEGE AND / OR THE WIDER COMMUNITY; AND IN SO FAR AS IT IS NOT INCOMPATIBLE WITH THE OBJECT SET OUT IN A ABOVE: B. TO PROMOTE FOR THE BENEFIT OF THE PUBLIC, THE PRESERVATION, MAINTENANCE, IMPROVEMENT AND REPAIR OF: (A) THE BUILDINGS AND FABRIC OF ETON COLLEGE (INCLUDING THE CHAPELS OF THE COLLEGE) WHICH ARE OF ARCHITECTURAL OR HISTORIC IMPORTANCE; AND (B) THE FURNITURE, PICTURES AND CHATTELS OF ANY DESCRIPTION HAVING HISTORIC OR ARTISTIC INTEREST CONNECTED WITH THE COLLEGE.

Consult and engage with stakeholders



Consult and engage with stakeholders



“Charities should stick to their knitting...”?

"The houses faced a bit of desolate ground occupied by dilapidated cowsheds and manure heaps. The needful repairs and cleaning were carried out, the waste land was turned into a playground where Mr. Ruskin had some trees planted."



Changing your purposes?

- Law Commission Report on Technical Issues in Charity Law (September 2017)
- Criteria for unincorporated charities - current
 - *(a) the spirit of the original gift,*
 - *(b) the desirability of securing that the property is applied for charitable purposes which are close to the original purposes, and*
 - *(c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances.*
- Criteria for Incorporated charities (companies) - current
 - *The new objects (or provisions for the distribution of assets on dissolution) are exclusively charitable*
 - *The trustees' decision to make the change is a rational one in the circumstances of the charity*
 - *The new objects do not undermine or work against the previous objects*

Changing your purposes

- Criteria for all charities – proposed
- *The Charity Commission should be required to have regard to the following matters: (a) the purposes of the charity when it was established; (b) the desirability of securing that the property is applied for charitable purposes which are close to the purposes being altered; and (c) the need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances; and*
- *The Charity Commission should be given a power to give public notice, or require the charity trustees to give public notice, of any amendment by a charitable company or CIO in respect of which the Commission's consent is required.*

Public benefit

- You must run your charity for the public benefit
- Take into account CC's public benefit guidance on running a charity

- Gilmour –v- Coats (1949)
- CC Inquiry into Public Safety Charitable Trust (April 2020)
- Preservation of the Arts Ltd (High Court, September 2020)
- *“British schools beat retreat from China”* The Times, 17.04.21

What else your governing documents says

- How trustees are appointed, when they meet, how many needed to make a decision, etc
- Things you cannot do (eg payments to trustees – see later...)
- Corporate Insolvency and Governance Act 2020
- Some things to consider:
 - Virtual/ hybrid meetings – members (and trustees)
 - Company members' duties (CIFF case)
 - Membership structure?
 - Managing conflicts
 - Delegation of trustees' powers
 - Electronic communications with members etc
 - Update legislative references

2. Managing charity finances

- Protect your charity's money
- Know your charity's financial position
- Keep accurate financial records
- Manage expenses and payments to trustees
- Deal with financial problems quickly

Protect your charity's money

- Make sure money is only spent on what is allowed by the charity's governing document
- Guard against fraud and cybercrime
- Spot risks using CC's "*Internal financial controls for charities*" checklist
- Explain how manage and review risk in trustees' annual report

Know your charity's financial position

- Set a budget and follow it
- Get the funds you need
 - Fundraising
 - Public fundraising permitted to return from Monday 12 April
 - The Charities (Protection and Social Investment) Act 2016: Fundraising reporting requirements guidance for trustees' annual reports (Sept 2020)
 - Selling goods and services
 - Making investments: Charity responsible investment guidance consultation (April 2021)
 - Brexit – Halo Trust pulling out of Syria(April 2021)
 - Philanthropy
 - Grants funding core costs
 - Kruger report- data

Manage expenses and payments to trustees

- As a trustee you cannot receive any other payments or benefits from your charity unless the charity's governing document allows it, or you have specific authority for it. Check the rules before you make any payments.
- Regulatory compliance case: Prince Andrew Charitable Trust (June 2020)

Deal with financial problems quickly

- Keeping up to date - Kids Company (February 2021)
- Take expert advice early
- Launch an emergency appeal
- Borrow money from banks or stakeholders
- Sell illiquid assets – land? (Law Commission reform – “when Parliamentary time allows...”)
- Release permanent endowment? (Law Commission reform)
- Review any charges your charity makes for facilities or services
- Stop or delay doing some of your charity’s activities
- Merge
- Close

