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Charities & Not for Profit newsletter

Managing financial difficulties

The Charity Commission has published new advice about COVID-19 related financial difficulties and how charities can work through those issues. The guidance is particularly aimed at helping smaller charities who might have less access to advice than larger charities.

The trustees first consideration must always be the best interests of their charity. This might not be straightforward however, and often involves a trade-off between meeting the immediate needs of the community and conserving funds to ensure that future beneficiaries can access services/assistance. All decisions must always be in line with charitable purposes and the governing document and users of the charity must be safeguarded/protected from harm.

Decisions might include:

- Selling investments in order to realise capital to help meet the urgent needs of the charity and its beneficiaries. However, realised proceeds could be significantly less now than they might be in the future. Any decision should document the pros and cons and make clear the reason behind the outcome.
- Is borrowing against assets a better choice for the charity?

If you are considering selling land, you need to check whether Charity Commission permission is required first.

The Charity Commission recognise that this is a period when charities are exposed to higher than normal risk, however if charity trustees have used their skills and experience, including asking for professional advice where necessary, then they should be protected. Trustees can be held personally liable for financial losses if they have acted dishonestly, negligently or recklessly. It is therefore imperative that finances are reviewed regularly, and all decisions and discussions are recorded. The full guidance is available here.

The Commission also advises that charities can look to other charities in their network, as well as their auditor or independent examiner for assistance.

The Commission suggest the following steps:

1. Consider your current financial situation.

   Charities should review their anticipated cashflow situation over the short, medium and long term by considering what payments will fall due and what cash is available to meet those liabilities based on estimated income.

2. Consider options for minimising costs and protecting/increasing income. This will aid the charity's cashflow situation.

   - **Minimise costs** Are there any non-essential outgoings that can be stopped? Are there any changes to the way the charity operates that might save money such as different use of technology? Are there any opportunities to join forces with other charities to aid cost savings? Are there any project costs that can be delayed? Can staff be re-allocated to priority projects/areas with use of the government's Job Retention Scheme to furlough any staff not needed to deliver urgent services? If you have any loans in place already, is it possible to re-negotiate payment terms over a longer period? Don't forget that the government will allow you to defer VAT in the current quarter.
   - **Increase and conserve income** Make sure that you keep all your funders up to date with your financial situation. Many foundations have signed up to a charter to offer more flexible funding arrangements. Are any of the emergency funding sources available to you, such as the National Emergencies Trust (NET)? Does your charity have any designated funds that could be utilised during the current pandemic? Designated funds are amounts received without external restriction but have been designated for specific purposes by the Trustees. It might therefore be appropriate for the trustees to use these funds for different purposes in the current climate. Do you have general unrestricted funds that you could use to cover any funding shortfall? Is it possible to use any restricted funds (there are strict rules surrounding the use of such funds, so you must take advice)?

3. Keep charity operations and finances under regular review. During the current pandemic and afterwards, robust and frequent monitoring of finances will help to manage the situation.

   Doing so will highlight whether there is a crunch point when the charity might need to consider closing. Trustees must be aware that a charity needs to report (via an online form) a "serious incident" to the Charity Commission if:

   - The scale of financial loss threatens the charity's ability to operate and serve beneficiaries.
   - The charity's financial reserves or other measures are not enough to cover losses.
   - The charity goes into insolvency or faces closure due to financial difficulties.

What to do if your charity cannot continue to operate due to financial problems caused by COVID-19?

If the trustees make the difficult decision that the charity can no longer continue to operate because of financial problems caused by COVID-19, they need to check the governing document for any specific requirements or restrictions on closure, such as the process to be followed, whether the charity can merge with another charity, and the use of any remaining assets after closure.

There will be costs of closure, such as redundancy and leasing costs that need to be factored into any review of the future of the charity.

You must communicate to beneficiaries, lenders and funders so they are aware of the situation.

You must follow the Commission's guidance on the steps to close the charity and seek professional advice to ensure the legal requirements are met.

The Commission's guidance includes links to organisations that have useful information, including the Small Charities Coalition and the National Council for Voluntary Organisations (NCVO).

Coronavirus Bounce Back Loan Scheme

The Government has announced the Bounce Back Loan scheme, which aims to help small and medium-sized businesses borrow between £2,000 and £50,000.

The Government will guarantee 100% of the loan and there won't be any fees or interest to pay for the first 12 months.

The scheme was launched on 4 May 2020. Loan terms will be up to 6 years, with no repayments due during the first 12 months.

The Government will work with lenders to agree a low rate of interest for the remaining period of the loan. The scheme will be delivered through a network of accredited lenders.

Organisations can apply if they are based in the UK, have been negatively affected by Coronavirus, and were not an 'undertaking in difficulty' on 31 December 2019. The following businesses are not eligible to apply:- banks, insurers and reinsurers (but not insurance brokers), public-sector bodies, state-funded primary and secondary schools. You cannot apply if you're already claiming under the Coronavirus Business Interruption Loan Scheme (CBILS). More information is available here.

Breaking news

The Job Retention Scheme has been extended to the end of October. Although the precise details are not known, there will be a lower contribution from the Government from 1 August.

Holding meetings during lockdown

The UK government's social distancing measures raise an important question for all organisations: how to hold safe and effective meetings during lockdown?

To address this question, the following areas should be considered:

Does the constitution stipulate meetings?

For most organisations (i.e. those that are not public listed companies), the constitution dictates whether and when meetings should be held and how they should be conducted. The constitution will normally take one of the following forms:

- Articles of association (companies)
- Trust deeds (trusts)
- Rules (unincorporated organisations such as social clubs)

Typically, a constitution stipulates physical meetings attended by a quorum. In view of the social distancing rules, exceeding the quorum would breach the "essential for work purposes" exception because anything above quorum is unnecessary. This restriction can be overcome using proxy voting and/or holding meetings virtually.

Even if a physical meeting is not stipulated, it may be more desirable than one conducted virtually. Although there are many freely available platforms, such as Skype and Zoom, technical glitches, inaccessibility and security may be a concern. That said, the "virtual" trustee meetings that PEM have been invited to attend so far have been glitch free and very successful.

Can the meeting be delayed?

It is likely that the meeting can be delayed using one or a combination of the following:

- **Change the constitution:** meeting requirements could be relaxed temporarily. For example, virtual meetings could be permitted; the regularity of meetings could be reduced. Whatever decision is taken, the decision must be documented to demonstrate good governance.
- **Change the accounting year-end:** the timing of important meetings, such as the Annual General Meeting, is often influenced by filing deadlines. Companies House has already granted charitable companies an additional three months to file their annual accounts. The Charity Commission has stated that it will be as "flexible and supporting as possible" when it comes to filing deadlines. If a charity feels it is unable to meet a deadline due to COVID-19, it can ask the Charity Commission for an extension.
- **Cancel/postpone meetings:** Given the pivotal role meetings have in facilitating corporate governance, and the importance of discussing COVID-19 internally, cancellation should be avoided if realistic alternatives are available.

Application of building regulations during COVID-19 outbreak

The government has issued new guidance to Building Control Bodies and Approved Inspectors ("BCBs"). The guidance covers temporary healthcare building construction and operating during the COVID-19 pandemic.

Temporary healthcare buildings and related facilities

The government recognises the need to ensure that erecting new healthcare facilities during the COVID-19 pandemic is not slowed down by unnecessary bureaucracy.

The government has not relaxed any of the formal building regulations (although this is being kept under review). Instead, local councils and approved inspectors can relax certain regulations, providing health and safety is not unduly compromised.

Building inspectors should note that the National Fire Chiefs Council has issued guidance on the creation of field hospitals, which can be viewed here.

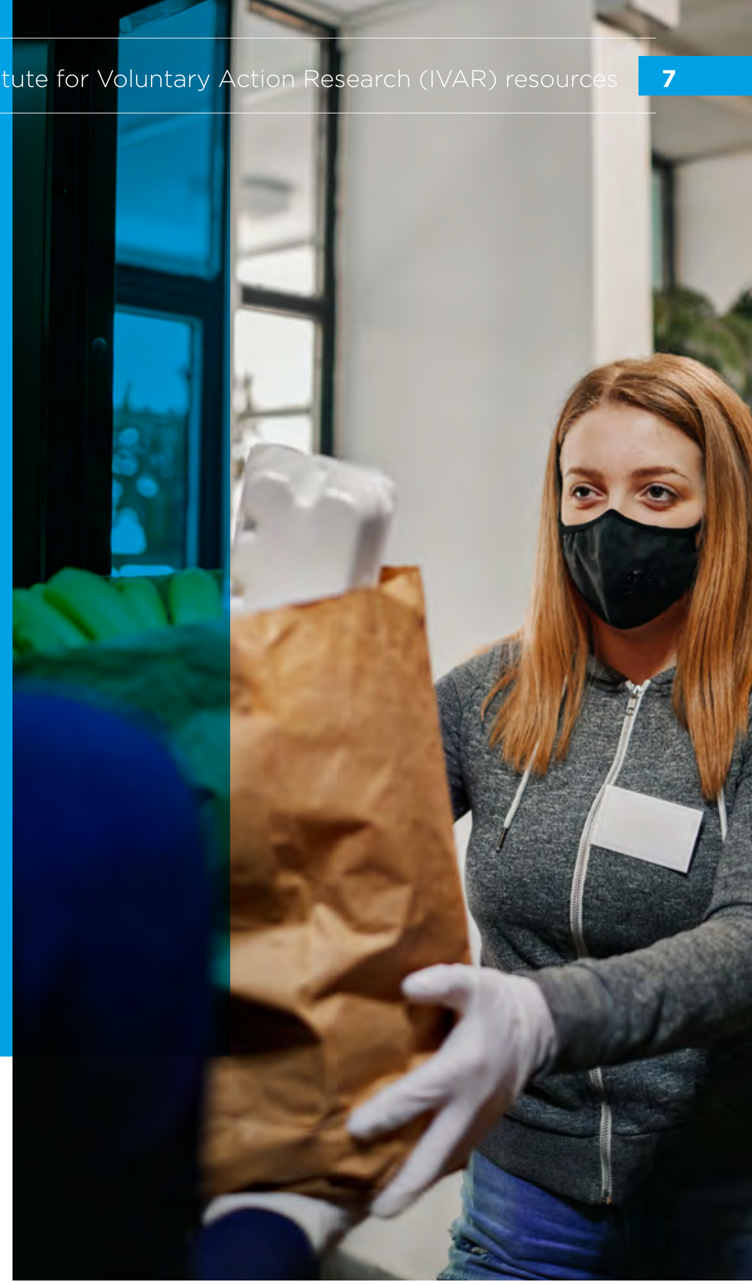
Guidance on operating during the COVID-19 outbreak

BCBs should continue to undertake normal onsite inspections if they can do so safely. BCB's may wish to supplement physical inspections with other methods, such as videos and photographs. However, these methods are not alternatives to physical inspections.

For businesses wishing to occupy a part-completed building, BCB's can issue part completion statements, which allow occupants to use the completed part.

The programme to remediate buildings with unsafe cladding, which was instigated after the Grenfell Tower fire, should continue where it is safe to do so.

Institute for Voluntary Action Research (IVAR) resources



The Institute for Voluntary Action Research (IVAR) is an independent charity that works closely with people and organisations seeking social change. They undertake and publish research and briefings on a variety of topics. You can access the COVID-19 section of their website here.

IVAR have produced three publications for trusts and foundations on the challenges faced by VCSE (voluntary, community and social enterprise) leaders during the COVID-19 crisis. Their research was undertaken during online peer support sessions (details of which is available on their website). The briefings are:

Briefing 1 "The pressures of uncertainty" was published 9/4/2020.

This summarised the outcome of discussions about What happens next? and covers Organisational management and delivery, Opportunities and risks and Funding/fundraising opportunities.

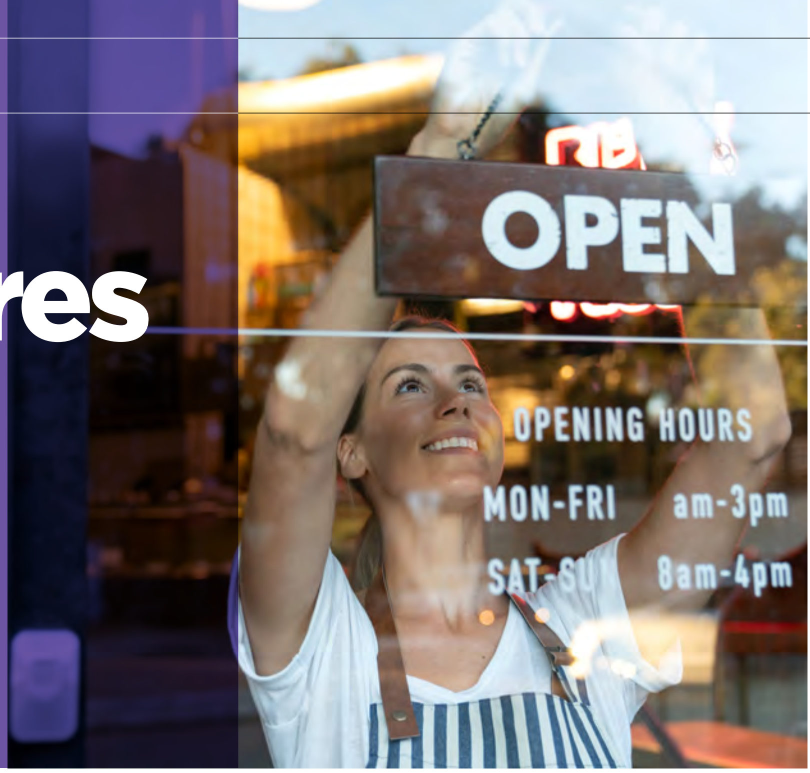
Briefing 2 "Moving out of the initial shock" was published 17/4/2020.

The main issues arising were concern for those beneficiaries who might be missing out or be at immediate risk. Concerns around the risk of violence and abuse, mental health needs, ongoing medical conditions were high as was anxiety about people being reluctant to ask for help. The leaders also expressed apprehension about being able to support their staff and volunteers who may be feeling isolated or bereaved, when they (the leaders) themselves are also in the midst of those same feelings. Leaders were also worried about the future availability of funding from trusts and foundations.

Briefing 3 "Getting ready for the fallout" was published 27/4/2020.

Leaders discussed current and future issues. Some are taking this time to think strategically about the longer-term plans and projects for the charity. Concerns were raised about access to I.T. facilities for the most vulnerable in society and the general consensus was that this method of communication does not reach the most vulnerable that really need it. Most organisations expect their unrestricted funds to reduce significantly.

New measures to protect commercial renters



On 23 April, the UK government introduced further measures to protect commercial renters from aggressive landlords.

The Coronavirus Act, which gained royal assent on 25 March, prevents landlords from forfeiting (i.e. terminating) leases for non-payment of rent; this measure is in place until 30 June. However, the act fails to prevent landlords extracting rent by other aggressive means.

Recognising this, the following new measures have been announced:

Temporary ban on statutory demands and winding up petitions

To extract rent, landlords first issue a statutory demand for rent. If rent is not paid within 21 days of the demand, this is taken as evidence of insolvency and grounds for issuing a winding up petition. Winding up petitions freeze bank accounts and void subsequent payments – unless sanctioned by a court.

Faced with such disruption, businesses are often forced to pay up.

To stop this practice, the government is temporarily banning statutory demands made between 1 March and 30 June and winding up petitions issued between 27 April and 30 June if the reason for non-payment is COVID-19.

Restriction on use of Commercial Rent Arrears Recovery (CRAR)

CRAR allows landlords to instruct agents (bailiffs) to recover rent by selling tenants' assets. The new measures prevent landlords from using CRAR unless they are owed 90 days unpaid rent. This measure is in force until 30 June.

The Government acknowledges that landlords are also facing similar pressures, which is why tenants are encouraged to pay what they can. In any case, tenants and landlords should endeavour to come to a mutually beneficial arrangement to tide them through the tough times ahead.

Business support tool finder

The Gov.uk website includes a new tool available for organisations and individuals to use to see what help is available to them. You can access it here.

Review of Charities & COVID-19

The House of Commons Department for Culture, Media and Sport Committee has prepared a report on the COVID-19 crisis and charities.

They discussed the NCVO (National Council for Voluntary Organisations) estimate that charities will lose about £4 billion estimated income in 3 months from March 2020 and the fact that the pandemic is having a different and wide-ranging impact on charities across the sector.

As reported in our last edition, at the moment staff on furlough from a charity cannot provide services to or generate revenue for their organisation as a volunteer.

The Committee have asked the government for a review and state: *"We recommend that the Department for Digital, Culture, Media and Sport works with the charity sector and HM Treasury immediately to review the measures in place to support businesses, and to ensure they fully meet the needs of the charity and voluntary sector. In particular, the Government should introduce a separate Coronavirus Job Retention Scheme for charities within four weeks. The scheme should enable furloughed employees of charities to volunteer for their organisations providing appropriate safeguards are met. We also ask the Government to guarantee that six weeks' notice will be given of the Coronavirus Job Retention Scheme ending so that charities can plan accordingly, and to phase the ending of the scheme to support any charities that are unable to return immediately to full capacity."*

In addition, on the topic of funding, the Committee state: *"We back the charity sector's calls for a stabilisation fund to secure the long-term financial health and organisational diversity of the sector. It also needs to be recognised that some organisations may take time to recover following the ending of the crisis and may need support beyond that point to get to a sustainable position. In addition to the support that has already been announced, the Government should establish further funding to assist charities and voluntary organisations to stay afloat throughout the Covid-19 crisis. This should be available to organisations facing financial pressures, even if they are not involved in the frontline response to Covid-19. We request that the Secretary of State updates us, preferably via an oral hearing as well as in the Government's written response to this Report, on what progress has been made in securing additional support for charities and tailoring the business measures to them, as well as the Department's plans for monitoring the ongoing impact of this crisis on the charity sector's financial resilience. Given the urgency of the matter, we request that we receive this update by Friday 5 June."*

The full Committee's report can be read here.

As and when any new announcements are made, we will let you know.

Charity Commision offers advice to online donors

The Charity Commission has issued useful advice to help online donors steer clear of fraudsters. The guidance, which is addressed to the Muslim community during Ramadan, is equally applicable to all donors.

With everything moving online during lockdown, fraudsters have ramped up their efforts to steal cash. The methods employed are approaching levels of sophistication that can dupe even the most discerning among us. From fake websites that look like the real thing to convincing emails purporting to be from charities, the methods available to fraudsters are increasing. The regulator suggests the following steps to ensure donations reach the intended recipient:

- Access the Charity Commission website and search for the charity's name and registration number to ensure it is genuine. Most charities with annual income over £5,000 must register.
- Do not feel pressurised to give financial information immediately; check that the charity is genuine first.
- Be very careful with emails purporting to be from charities, especially if they are unsolicited. Be particularly wary of links in the email (if hovering the cursor over links reveals an address that does not belong to the charity, the email is likely phishing). Pay attention to the composition of the email; genuine emails invariably look professional these days.
- Visit the charity's website independently by typing the address into the internet browser's address bar rather than visiting it via a link or search engine. The https prefix and the padlock symbol in the address bar are hallmarks of a safe website.
- Find out more about a charity before donating.
- Ignore requests to donate via a money transfer company (such as Western Union and MoneyGram). Payments made via these organisations are very difficult to recover and trace. Donating using a debit/credit card is much safer.
- If in doubt about an approach, give to a charity you know and trust. The Charity Commission website can be used to search for local charities and charities providing specific services you wish to support.

Proposal to allow certain small charities to claim under the Small Business Grant Fund

CTG has prepared a briefing for officials at BEIS, MHCLG and HM Treasury proposing that the eligibility criteria for the Small Business Grants Fund (which provides access to a £10k cash grant) be amended to allow charities to make a claim where they would be have been eligible to claim for Small Business Rates Relief, had they not claimed mandatory charity business rates relief.

A small change to the rules could unlock important funding for small charities unable to access many of the Government's business support measures. It is proposed that the associated costs would be allocated from funds already provided to local authorities by central Government, with the result that there would be no additional cost to the Exchequer.

This measure and proposal applies to England only.

How can the Government ensure support packages are effective for charities?

Charity Tax Group (CTG) has been working with the Charity Finance Group and NCVO to assess the steps Government could take to ensure its support packages are most effective for charities.

Last week a briefing was sent to officials at HM Treasury, HMRC, BEIS and DCMS with proposals relating to the Job Retention Scheme, Business loans, Grant Funds and tax payment deferrals. There's already been some progress on Small Business Grant Funds and CBILS and it plans to continue to make the case for charities.

To help inform its future lobbying plans, CTG is asking charities to complete a short survey (10 questions which should take just 5 minutes to complete) on the extent to which they have made use of COVID-19 Government support measures. Please respond by clicking the link below and share with any relevant contacts.

https://surveymonkey.co.uk/r/92HJ897

Links to further advice

Additional information and guidance can be found from the following sources:

- PEM Knowledge Hub
- NCVO Practical Support
- CFG coronavirus guide
- Charity Tax Group coronavirus information
- COVID-19 funders
- GOV.UK

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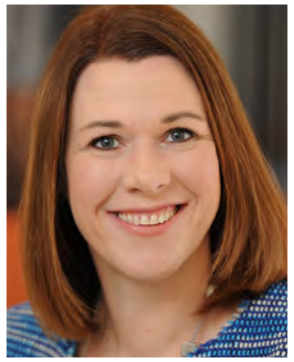

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