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Charities & Not for Profit newsletter

Charity Commission inquiries

When the Charity Commission undertakes an inquiry, it usually publishes a press release when it is opened and the findings once it has been concluded, unless to do so would not be in the public interest.

The Commission may also publish reports of non-inquiry work where there is significant public interest in the issues involved and/or where there are lessons to be learned for the wider charity sector.

The Commission published reports for around 35 inquiries in 2019 and has done so for 24 inquiries so far in 2020. Cases are wide-ranging and a few of the most recent cases (both ongoing and concluded) include:

The Kingdom Church UK

An inquiry has been opened into concerns over management of the charity. Media reports claimed that the church was selling "plague protection kits" that would cure and protect against COVID-19. The local London council initially opened an investigation alongside Trading Standards. The Charity Commission became involved due to concerns over accuracy of the financial information being disclosed. The inquiry is going to concentrate on:

- trustee compliance with their legal duties concerning the administration, governance and management of the charity
- the extent to which trustees have managed the charity's resources and financial affairs, including managing conflicts of interest
- examination of the charity's relationship with the connected organisation responsible for the "plague protection kits"

Sales and promotion of these kits has been halted with the assistance of Trading Standards. In these times of unprecedented uncertainty, the general public are looking to charities for support and assistance and so the reputation of the sector is in the spotlight.

The Charity Commission states that "Charities should be organisations that people can trust."

Humanity Torbay

An inquiry has been opened amid serious concerns about Trustee oversight and management of the charity. This Devon charity exists to support homeless people by running a drop-in centre or providing clothing or food.

The Commission has been in touch with the charity due to concerns that social media posts did not comply with the Commission's guidance on campaigning and political activity.

Guidance about campaigning and political activity by charities is covered in Commission guidance CC9. Generally speaking, charities may undertake campaigning if it furthers their purpose, but it may never be political, and the charity must always make clear its independence.

As well as reviewing the charity's compliance with regulatory advice and guidance, particularly on the use of social media channels, the inquiry will also investigate trustee management of the charity's resources and financial affairs because the 2019 financial statements were accompanied by an Independent Examination report highlighting concerns about accounting records.

Wimbledon and Putney Commons Conservators

The charity was established to preserve the commons for the purpose of exercise and recreation. It sold land access rights to the local council to allow for a road to be built that would provide access to a primary school and residential flats.

£350,000 was due to be paid to the charity for the easement under an agreement made in 2012, but a disagreement later developed amongst the trustees, where there had been a change in the board. A law firm had been appointed to advise, but that relationship broke down. In 2015 the charity's Audit and Risk Committee commissioned a surveyor's report, costing £21,750 + VAT. Many of the other charity Trustees disagreed with this use of charity funds. The surveyor's report said that granting the easement on the terms agreed was not in the charity's best interests and advised that the easement payment should be a minimum of £1,187,500.

Two trustees made a serious incident report to the Commission for the undervalue arrangement. The Commission met with the charity and set out a six-step plan to resolve the issues.

By late summer of 2016 only one of those steps had been completed and the Commission was concerned that the process might break down entirely. They were also concerned that the trustee involved in the original agreement may not have acted in the best interests of the charity, or with reasonable care and skill such that they might have breached their trustee duty and exposed the charity to a significant financial loss. In addition, there was a risk of loss to the ongoing financial stability of the charity due to professional fees being incurred on resolving the trustee dispute. An interim manager was appointed, and a full inquiry carried out by the Commission.

The inquiry found that the inability of the trustees to manage the dispute was evidence of mismanagement of the charity.

Lessons for the charity sector – charity trustees have a duty to comply with their legal duties, which includes acting in the best interests of their charity, and with reasonable care and skill. A surveyor's report should have been commissioned at the outset to provide the trustees with suitable information to base their decision on.

When the conduct of trustees falls below expected standards there can be damage to the reputation of individual trustees, the charity itself and the wider charity sector.

Believe in Magic

The inquiry into this charity has just been concluded this month. The charity's objects were to relieve the needs of children and young people up to the age of 18 who were suffering from a terminal illness and their carers/family.

The inquiry was opened because of late and incomplete filing of documents and concerns about potential private benefit by a trustee. The latter was never proven. Charity income was generated through online platforms, there was only a small trustee board and they were all related.

Only one trustee had the responsibility to be the signatory, for limitless amounts. ▶

The Commission concluded that the trustees' failure to make timely submissions amounted to misconduct and/or mismanagement of the charity. Although potential personal benefit could not be proven, this issue highlighted a distinct failure to responsibly manage the charity's resources and financial affairs. There was no clear audit trail from cash donations to the bank and accounts. The Commission froze the charity's bank account and two of the trustees were removed. The charity had ceased to operate and was therefore wound up with the remaining funds being transferred to another charity with similar purposes.

Lessons for the charity sector – Charities must have adequate financial controls in place that record the financial activities properly and ensure that financial governance is transparent. Where a charity has few trustees then the risk of a conflict of interest becomes more likely and this is exacerbated when family relationships are involved. Policies and procedures should be put in place to identify and manage conflicts.

Many of the Commission's inquiries centre around the same recurring matters – misconduct/mismanagement of a charity, related party issues and conflicts of interest. Trustees need to ensure they obtain the appropriate advice and take note of all relevant guidance to avoid potential problems.

Charity Commission launches revamped online register

On 3 September 2020, the Charity Commission launched the new online register of charities, which seeks to widen the public's window on charities.

Increased transparency

The new register provides more information to donors, such as pending regulatory enquiries, penalties and the number of staff paid over £60k.

The Commission hopes that the increased transparency will give donors the confidence to give more generously.

Better service for charities and professionals

Charity trustees should find the online register easier to navigate and update. The new datasets feature allows professionals (such as researchers and analysts) to access the entire register dataset, further enhancing transparency

The Commission welcomes feedback, which will be used to implement improvements.

Double-defaulting charities

Annually, the Charity Commission publishes results of a review into charities who have failed to file their accounts and annual returns for two or more years out of the previous five years.

The filing requirements are as follows:

- Income < £10,000 – submit relevant sections of the annual return (the accounts do not need to be filed)
- Income > £10,000 and all CIOs (Charitable Incorporated Organisations) must prepare and file an annual return
- Income > £25,000 and all CIOs must file a copy of their Trustees' annual report and accounts including the external scrutiny report (Independent Examination or Audit)

Charities potentially falling into this double-defaulting category are issued a warning. In some cases, their documents are filed and no investigation is required. If that is not the case and an inquiry is opened; that inquiry is initially limited to a review of the charity trustees' mismanagement/misconduct regarding charity submissions.

Between April 2019 and March 2020, of the 108 charities identified by the Commission, 77 subsequently submitted their documents, 26 no longer existed or were not operating and were therefore removed from the register and 5 charities had inquiries opened.

In certain circumstances subsequent inquiries were opened into separate issues that came to light.

The separate issues identified included:

- Conflicts of interest
- Connected party transactions
- Unauthorised trustee benefits
- Adequately managing risks to the charity, its property and reputation
- Potential misapplication and misappropriation of charity funds.

The Commission advise: "Failure to submit the annual documents to the Commission may be a criminal offence. The Commission also regards it as mismanagement and/or misconduct in the administration of the charity. Providing timely, accurate and informative financial information that will help funders, donors, beneficiaries and others to understand the charity and its work will encourage trust and confidence in it."

Gift Aid emergency relief

A campaign led by a group of charities and charity related bodies, including the Charities Aid Foundation, the Chartered Institute of Fundraising, the Charity Finance Group and the Charity Tax Group, is seeking to secure an increase in Gift Aid from 20% to 25% for the tax years 2020/21 and 2021/2022.

The Charity Sector is under huge financial pressure and so this campaign aims to secure additional funds for all charities who are in a position to claim Gift Aid. The proposal would see a £100 donation from a UK taxpayer increase to £133.33 for the charity with a Gift Aid claim. The group proposing the change would like as many charities as possible to show support for this campaign, to demonstrate to the Government that this is vital funding required to assist charities in continuing with their activities.

So far over 300 charities have shown their support. If you would like to sign up to the campaign please visit the Charities Aid Foundation website where full details can be found here. The advantage of this proposal is that charities of all sizes would be able to benefit.

The second element of the campaign is to extend the Gift Aid Small Donations Scheme (GASDS) so this is available to more charities and also increase the amount which can be claimed.

Support for Environmental charities – Green Recovery Challenge Fund

A £40 million fund has been launched for environmental charities and their partners who are involved in projects which relate to nature conservation and restoration, nature-based solutions or connecting people with nature.

Grants of between £50,000 to £5 million are available. This aims to create new jobs and safeguards existing one and up to 100% of project costs can be covered.

Expressions of interest for amounts over £250,000 needed to be made by 24th September, with applications made by 26 October.

Applications for smaller grants must be made by 2 October.

More information can be found on the **Government website**.

Charity Commission launches 2020/21 business plan

Within the new plan, the Commission states that its purpose is "to ensure charity can thrive and inspire trust, so that people can improve lives and strengthen society".

To achieve its purpose, the Commission has created the following five strategic objectives:

- holding charities to account;
- dealing with wrongdoing and harm by being better at detecting, deterring and preventing wrongdoing and harm;
- informing public choice by improving access to information;
- giving charities the understanding and tools they need by increasing professionalism in trusteeship; and
- keeping charity relevant.

The business plan discloses the following five key deliverables for 2020/21:

Key deliverable: "We have delivered improvements to the effectiveness of our regulatory work and have met our customers' expectations."

PEM insight: The Commission's handling of enquiries and casework needs improvement.

This will be aided by the Casework Redesign Initiative, which involves the implementation of a new IT system to improve casework management.

A Technical Competency Programme will be implemented to improve casework skills.

Casework quality will be improved by the establishment of a Quality Assurance Framework.

Key deliverable: "We have made full use of our regulatory powers to protect what makes charity special, and developed proposals for new powers to address deficiencies in the current legal framework."

PEM insight: The Commission intends to finish a review of its powers. The review is designed to identify new powers that are needed to improve regulatory effectiveness.

Key deliverable: "We have delivered revamped core guidance and an improved website, making it easy for trustees to access what they need."

PEM insight: The Commission aims to update 25% of its guidance to make it more targeted and relevant to trustees. Outdated guidance will be updated or removed.

Improvements will be made to the website, including the charity register (see article on the new charity register). ▶

Key deliverable: "We have defined the future relationship we will have with trustees and have begun to build services to support them."

PEM insight: New digital services will be planned during 2020/21, which are designed to support trustees.

One service will be an online portal that charities can use to manage their relationship with the Commission.

Eventually, the charity registration process will be fully digital.

Key deliverable: "We have implemented our new organisation design and delivered the improvements in infrastructure that are required to enable us to deliver our strategy and purpose."

PEM insight: This involves implementing new IT systems to improve cyber security.

It also involves delivering the first year of the People Strategy, which is a workforce plan to ensure the Commission has enough people with the right skills.

Visit the Charity Commission website to view the whole document.

Trading subsidiaries

The current financial conditions resulting from the COVID-19 pandemic have created problems for many subsidiaries of charities.

Some subsidiaries are expecting to be loss making for 2020/21 and so are considering whether they are in a position to make their Gift Aid payments for the previous year.

Directors need to consider their position carefully to ensure they do not put the subsidiary in a position where they cannot pay their debts or will struggle to survive if the Gift Aid payment is made.

This needs to be balanced with the obligations under any Deed of Covenant in place with the parent charity.

Trustees of charities must also ensure they carefully document their reasons for continuing to support their subsidiary and justify why this is for the benefit of the charity.

Some trading subsidiaries are submitting provisional tax loss claims to shelter the tax which would otherwise arise in the previous tax period.

HMRC are under no obligation to accept these and each claim is considered on a case by case basis.

The company will need to provide supporting evidence to justify the claim.

HMRC clarification of VAT & charity online advertising

There has been progress in the ongoing correspondence between the Charity Tax Group ('CTG') and HM Revenue & Customs ('HMRC') on the VAT treatment of digital advertising.

HMRC has long argued that most digital advertising should be subject to VAT and started raising assessments to recover VAT from some advertising agencies. These costs were being passed on to charities and amounted to millions of pounds of irrecoverable VAT.

In July 2020, HMRC wrote to the CTG saying that VAT was no longer considered due on internet search browsing ads, except where they appeared on personal social media accounts. In their Revenue & Customs Brief 13 (2020) on the subject published on 8 September, HMRC went further saying it accepted that payments for location targeting was also within the zero rate. In addition, behavioural, audience, content and device targeting all fall within the zero rate.

Richard Bray, vice-chair of the CTG, said: "We are delighted that after further positive discussions we have had with HMRC, their view of the VAT status of digital advertising provided to charities has been clarified even further."

"Not only have they accepted a wider ambit for the zero rate, but the classifications of services, based on their policy, will be much easier to apply than appeared the case before the brief was issued. It is great news for charities."

One less encouraging section of the Brief states that advertising to social media/ subscription website accounts are standard rated stating: 'When individuals log in to their personal pages, sites use tools to apply advertisements to them when they are signed in. The content will be related to the individual's known likes, dislikes, interests or location, as a signed in member of the website.'

It is difficult to understand why targeting which is acceptable in other forms of online advertising is unacceptable when supplied to social media accounts.

The CTG disagrees with HMRC's policy on social media and subscription website advertising, and is considering its position relating to the interpretation of current law and opportunities to change the legislation to better reflect the original intentions behind the relief.

HMRC has suggested that a review of the VAT legislation will be incorporated into a broader Department for Digital, Culture, Media and Sport review on the future regulation of advertising. CTG has long argued that the VAT legislation in this area is no longer fit for purpose and welcomes this development as do we at PEM.

Supporting charities helping those affected by COVID-19

Donors wishing to support charities set up to help those affected by the COVID-19 pandemic should ensure they do so safely. This can best be achieved by checking that the charity is registered with the Charity Commission.

Disaster Emergencies Committee (DEC)

When a crisis emerges, the DEC brings together 14 leading UK aid agencies (such as the British Red Cross and Save the Children) to raise funds quickly and efficiently. On 14 July 2020, the DEC launched the Coronavirus Appeal, which is intended to protect the most vulnerable communities around the world.

As all 14 members of the DEC are registered charities, donors should give confidently in the knowledge that their donations are fully regulated by the charity law framework.

A warning

Although most COVID-19 fundraising is genuine, unscrupulous criminals have exploited public generosity using fake websites and emails.

The following steps should be taken to reduce the risk of fraud:

- visit the Charity Commission's website to check whether the charity is registered;
- avoid giving away financial information until you are sure the charity is genuine;
- check grammar in emails and hover over links to view their destination; and
- contact or research the charity before donating.

If you believe that an appeal is fraudulent, contact Action Fraud.

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
- Action Fraud

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