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Charity E-News March 2020

Impact of covid-19 on charity governance

The covid-19 pandemic is presenting charities and trustees with unprecedented difficulties in conducting day to day business. We know how much concern that this is creating across the sector – particularly in terms of financial and human impact.

It is critical in all of this that charity trustees bear their legal duties in mind. In particular, the overarching duty to act in the interests of the charity is of vital importance. That duty should continue to govern your actions in these difficult circumstances.

The Charity Law Team at Turcan Connell continues to work as normal from home and we are here to respond to any issues which you are facing and to provide advice – remotely – on a business-as-usual basis.

Conduct of trustee business

We are being asked regularly about how trustees can conduct their business in the face of social isolation requirements imposed by the UK and Scottish Governments. Many charity constitutions contain provision for trustee business to be conducted by phone or video conferencing. You should maximise use of those provisions now.

In the absence of such provisions, given the situation we are all in, best practice would suggest that trustees nevertheless proceed to conduct business by those methods where possible – with a view to ratifying decisions at some later stage where necessary. Decisions taken by exchange of email may be possible but may not benefit from immediate interaction in the same way as virtual meetings. That method should be used with care, although for routine matters it will suffice in the majority of cases.

Annual General Meetings

AGMs cannot proceed in the traditional way and may not be constitutionally valid when conducted virtually. Where your constitution requires the holding of an AGM, we recommend that you take advice on how to manage the governance aspects of that meeting.

Audit of accounts and going concern

The Charity SORP committee has issued guidance in relation to the conduct of audit procedures, which may involve more trustee time in providing information electronically which would otherwise have been conducted through field work or through on-site inspection of ledgers and papers.

The committee has also advised on the going concern basis of reporting and on alternatives which may have to be adopted. Trustees need to consider whether the going concern basis applies to them based on their projected position at the point of signing their accounts. That may create difficulties for charities about to sign off their accounts – especially where reporting deadlines loom.

The guidance from the SORP committee can be found here: <https://charitySORP.org/media/648486/sorp-covid-19.pdf>.

Grants from key funders

Many charities are concerned about how to utilise grants which have been provided by funders for current year work. Most funders are treating requests for extensions or adjustments to restrictions with great sympathy.

You should consider carefully the conditions attaching to any funding you have received and you may need to approach some funders where you believe that an adjustment to grant conditions or restrictions is needed.

Many charities are actively taking steps to keep funders informed of any expected or potential impacts that the covid-19 situation is causing, even if grant terms and conditions do not specifically seem to require this. We would encourage charities to consider this positive, proactive step to help nurture key funding relationships. As with other governance matters, if funding issues are having a material effect, charities may need to consider whether a Notifiable Event has arisen and should keep in touch with OSCR accordingly.

Regulatory compliance

OSCR, the Charity Commission for England and Wales, and Companies House have all issued guidance on how to manage regulatory compliance in present circumstances. While extensions can be granted for the lodging of accounts, the formal deadlines will otherwise apply, although the charity regulators will act proportionately where accounts and annual returns are received late.

Links to the latest guidance can be found here, but please bear in mind that matters are moving quickly and this guidance will quickly become out of date or may be changed at short notice:

Office of the Scottish Charity Regulator

<https://www.oscr.org.uk/news/charities-and-coronavirus-an-update-from-the-regulator/>

Charity Commission for England and Wales

<https://www.gov.uk/government/news/coronavirus-covid-19-guidance-for-the-charity-sector>

Companies House

<https://www.gov.uk/government/news/companies-to-receive-3-month-extension-period-to-file-accounts-during-covid-19>

Charity advice

If you need advice on any matter which is troubling your charity board, and would want to have a free exploratory conversation for a quarter of an hour with a member of the Charity Law Team, then please contact any one of us and we will be pleased to help. Our details can be found below, or contact the whole team at charities@turcanconnell.com and a member of the team will reply.

Charity Law Team

Gavin McEwan, Partner and Head of Charities

Gavin is Head of Turcan Connell's Charities Legal Team working principally in the fields of charity law, succession, trusts, tax and asset protection. He is accredited by the Law Society of Scotland as a specialist in charity law. He is a member of the Charity Law Reform Committee of the Law Society of Scotland and of the standing tax committee of the Charity Law Association.

Gavin is co-author of Tolley's Charities Manual and has co-written a number of other charity law textbooks. He is a trustee of several charities including Live Music Now, The Dean Cemetery Trust and the Edinburgh International Festival Endowment Fund

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Simon Mackintosh, Consultant

Simon is a Consultant with Turcan Connell and a former Chairman of the firm. He works with charities particularly on issues of governance, regulation, formation and mergers, including tax aspects. He was a member of the Scottish Charity Law Review Commission (the McFadden Commission). He speaks regularly at specialist conferences both in the UK and abroad, and is a member of STEP.

Simon is the former Chairman of The Edinburgh Academy and of The Scottish Episcopal Church Pension Fund. He has served on the board of the Edinburgh International Book Festival and currently chairs the Family Council of Macphie of Glenbervie.

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Debbie McIlwraith Cameron, Associate

Debbie exclusively practices in charity law, and her main areas of work include charity incorporation, re-structuring, mergers and winding up; trust and charity administration; charity reorganisations and restricted funds applications; fundraising and legacy queries, and advising on governance matters including trustees' duties. She also has experience advising on data protection issues for charities.

Debbie also assists with the Turcan Connell Charity Office. She is presently a Trustee of the Mansfield Traquair Trust and a member of the Edinburgh Chamber of Commerce Inspiring Communities Group.

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David Smith, Solicitor

David splits his time between charity law, succession, trusts and asset protection. He is one of the first trainees to specialise in charity law and has already gained experience in restricted funds applications, charity incorporation and re-structuring. He has also assisted with governance matters including trustees' duties and compliance with the Equality Act 2010.

David is currently shadowing the Trustees of the National Trust for Scotland.

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