

Tuesday 6th February 2018

The Business of Charities 2018: Risk Avoidance

Presented by:

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“ Kick it off, throw it in, have a little scrimmage,
Keep it low, a splendid rush, bravo, win or die;
On the ball, City, never mind the danger,
Steady on, now's your chance,
Hurrah! We've scored a goal. ”

Norwich City Football Club



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Neale Grearson

Partner and Head of Charities

Department



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Trustees

Taken on Trust – The Awareness and effectiveness of charity trustees in England and Wales

November 2017

“Trustees have overall control of a charity and are responsible for making sure it does what it was set up to do”



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In England and Wales:

- 700,000 trustees (two thirds male)
- Average age 55-64
- 92% white
- 80% have no additional staff/volunteers
- On average devote 4.88 hours per week
- £3.5b pa estimated time value
- Biggest motivators:
 - Personal interest
 - Relevant skills
 - Give something back



Risks

Charity Commission identifies main areas:

- Damage to reputation
- Receiving less funding or fewer public donations
- Losing money through inappropriate investments



Risks of being a Trustee

- Structure of charity
 - Limited liability
 - Unincorporated
- Liable for actions of other trustees
- Acting appropriately
 - Use of professionals
 - Legal/investment advice
- Fear factor for professionals being trustees
- Time constraints as a volunteer



The “Bad” Trustee

- The “Criminal” Trustee
- The “Bully” Trustee
- The “Always has a reason not to attend” Trustee
- The “Missing in Action” Trustee



The “Bad” Trustee

- Governance
 - Not employees
 - Appointment of trustees
 - Dismissal of trustees
 - “Management” of trustees
 - Role of Chair
- Conflicts of interest
- Charity Commission Involvement
 - Directors



Kids Company: ex-board Members face company directorship ban

“Kids Company’s services, logistics, egos and £46m in public money were all supposed to be overseen by a committee of high profile volunteer trustees. It sounds absurd in the cold light of day but this is how most charities work”

theguardian

31st July 2017



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Fundraising club closes after groping scandal



THE  **TIMES**

25th January 2018



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Former Treasurer of Lowestoft and Waveney DIAL
jailed for stealing £200k from charity.

EAST ANGLIAN
DAILY TIMES

7th July 2017



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Louis Hilldrup-Boorman
Marketing Manager



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My experience working with the Charity sector



The **Benjamin** Foundation



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Damage to reputation from bad PR/marketing

Examples you are all familiar with...

- The collapse of Kids Company
- Suicide of longest serving poppy seller who was “overwhelmed and distressed” by amount of requests for donations.
- Morrisons data breach
- Presidents Club
- Donald Trump!



As a result...

- The Charity Commission reported that public trust and confidence in charities has fallen to the lowest recorded level since monitoring began in 2005.



CHARITY COMMISSION
FOR ENGLAND AND WALES



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Rebuilding public trust and protect reputation

1. Openness, honesty and transparency
2. Communicate effectively
3. Risk Awareness
4. Be prepared to respond
5. Understand data protection



Data breach examples

Company (Data Controller)	Details of breach	Level of fine	Date
Morrisons	'service email' to customers without consent	£10,500	June 2017
Norfolk County Council	Sensitive personal data left in cabinet given to second hand shop	£60,000	March 2017
Cold Call Elimination Limited	unsolicited telemarketing	£75,000	September 2015
Macmillan Cancer Support	Wealth ranking and finding additional data	£14,000	April 2017

General Data Protection Regulation (GDPR)

25th of May

2018



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GDPR... Frequently Asked Questions

- What is GDPR?
- Why is the current data protection legislation changing?
- Is my charity going to be impacted?



Who does the GDPR apply to?

- The GDPR applies to ‘controllers’ and ‘processors’.
- A controller determines the purposes and means of processing personal data.
- A processor is responsible for processing personal data on behalf of a controller.



What's the difference?



Data Protection
Act 1998

Vs



Principles

DPA	GDPR
Fair and lawful processing	Lawful fairness and transparency
Specific purposes	Purpose limitation
Adequate, relevant and not excessive	Data minimisation
Accuracy	Accuracy
Retain as long as necessary	Storage Limitation
Respect Data Subjects' Rights	Integrity and confidentiality
Security	
Transfers outside of the EEA	

GDPR Amendments

- Application
- Principles and accountability
- **Consent**
- Data subjects' rights
- Security
- Data Protection Officer
- Sanctions



Consent

- The GDPR sets a high standard for consent
- Consent should be separate from T&C's
- Bans the use of pre-ticked boxes
- Specific right to withdraw



Consent – how does this apply to you?

- Marketing lists
- Electronic Mail Marketing
- ‘Soft opt-in’ is no longer sufficient



Consent – how does this apply to you?

- Existing mailing lists...

Do you have to obtain fresh consents from your existing marketing database?



GDPR is not alone

- GDPR is replacing DPA
- EU ePrivacy Regulation is replacing PECR
- Old world, compliance means meeting the needs of both PECR and DPA.
- New world, compliance means meeting the needs of both ePrivacy and GDPR



GDPR: Risks and Penalties

- Penalties will reach an upper limit of £17 million or 4% or annual global turnover – whichever is higher.
- The threat of insolvency or even closure as a result of GDPR penalties will soon be very real.



What steps can you take?



Implement appropriate measures including data protection policies

Obtain consent and ensure data subjects are opting in

Ensure you have the right procedures in place to detect, report and investigate a personal data breach

'12 steps to take to prepare for the GDPR' Guide by ICO



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David Perry
Head of Employee Benefits

Ian Sadd
Account Executive



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Trustee Indemnity

CHARITIES AND THEIR RESPONSIBILITIES

- Trustees have similar responsibilities to directors of a company because of legislation and regulations
- Directors usually get paid for their trouble whereas trustees can be unpaid volunteers
- A simple mistake of non-compliance can be made or one of the trustees can commit a wrongful or irresponsible act leading to liability
- Trustee indemnity insurance helps to protect against these wrongful acts and to ensure that the charity's funds and assets are not at risk

CLAIMS EXAMPLES

- Making an error or omission can lead to compensation claims, legal action and official regulatory investigations
- A trustee provides a statement to the press and contains libellous comments. Costs of defending such claims would be excessive even if the claims have no merit
- A number of trustees make a decision to assist with another organisation which is not the intended purpose of charity resulting in an investigation
- A trustee appoints a company belonging to a friend to undertake work on behalf of the charity and then the company fails to fulfil the contract

CLAIMS EXAMPLES

- The charity appoints a Health and Safety Officer and following an accident causing injury, the investigation finds the charity is not complying with the Health and Safety legislation. An action is taken against the individual Health and Safety Officer.
- Insurance policies will still exclude dishonest or fraudulent acts or omissions or any intentional breach of any statute or regulation

CYBER INSURANCE

- Charities are a target for hackers because of the amount of data held and some may not have the resources to afford the best firewall/anti-virus protection
- Cyber insurance is readily available which deals specifically with damage to the hardware/software and the expenses/costs associated with a hack or loss of data
- It is not just computer data, it can be paper records too
- Most policies will contain Privacy Protection cover – failure to keep customers data secure
- Other sections of cover include business interruption, extortion, breach costs, crisis containment and multimedia liability

The image features several stacks of coins of various colors (gold, silver, and copper) arranged on a dark, reflective surface. A semi-transparent blue horizontal band is overlaid across the middle of the image, containing the text "Investment Risks" in white. The background is softly blurred, showing a light-colored wall and a vertical wooden element.

Investment Risks

INVESTING CHARITY MONEY

What are the risks of not seeking advice?

- Investment policy statement – is this a creation of the trustees
- Is this reviewed and amended periodically
- Structure of investments
- Performance /liability matching
- Changes in legislation/objectives

This should be a powerful tool with 2 objectives:

- For the charity – peace of mind with no nasty surprises
- For the investment manager- a clear summary of what is expected

OTHER INVESTMENT RISKS

- Tolerance of investment risk
- Capacity for loss
- Be prepared to challenge investment managers
- Education is key

- Ethical and sustainable investing
- Environmental, social, governance - the three sustainable investing dimensions

Michael Olmer
Consultant Solicitor



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Options on Setting up a Charity

Made to measure or off the peg?



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Charity Structures

- Unincorporated Association
- Trust
- Company Limited by Guarantee
- Charitable Incorporated Organisation (CIO)
- All for Charitable Purposes



Unincorporated Association

- Group of individuals
- Good cause
- Informal
- BUT Personal Responsibility

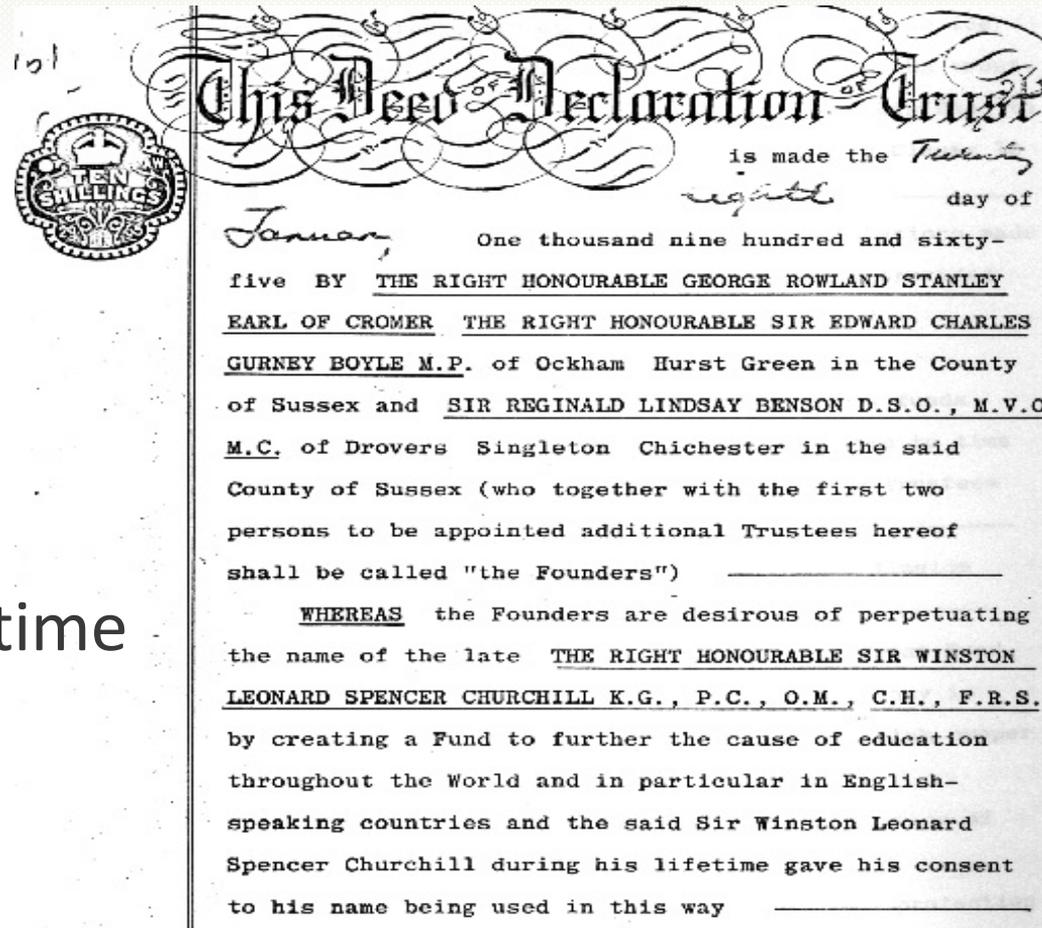


*“Phew! That was close!
We almost decided
something!”*



Trust

- Traditional
- Complex to draft
- Complex to administer
- Affected by ravages of time



Trust Structure



Company Limited by Guarantee

- Corporate Structure
- Corporate Personality
- Limited Liability
- Cheap to set up
- Regular Maintenance



Charitable Incorporated Organisation (CIO)

- Recent structure specifically for Charities
- Template constitutions
 - Association
 - Foundation
- Corporate Structure
- Limited Liability
- Conversion
- Lack of flexibility



New CIO Conversion Process for Charitable Companies

- Streamlined Process to convert Charitable Company to CIO.
- CIO Constitution and Special Resolution of the Company.
- Straightforward cases only.



New CIO Conversion Process for Charitable Companies

- Phased approach from 1st January 2018

Date	Annual income
1 January 2018	Less than £12,500
1 March 2018	Between £12,500 and £25,000
1 May 2018	Between £25,000 and £100,000
1 June 2018	Between £100,000 and £250,000
1 July 2018	Between £250,000 and £500,000
1 August 2018	Greater than £500,000

Enforcement by the Charity Commission

Five Statutory Objectives

- To increase public trust and confidence in charities.
- To promote awareness and understanding of the operation of the public benefit requirement
- To promote compliance by Charity Trustees with their legal obligations in exercising control and management of the administration of their charities.
- To promote the effective use of charitable resources.
- To enhance the accountability of charities to donors, beneficiaries and the general public.



Powers (1)

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Powers (2)

Charity Commission can require any person to

- provide them with accounts and statements in writing on the matters under investigation;
- provide written answers to any questions or inquiries addressed to them, and to verify any accounts, statements or answers by statutory declaration;
- provide copies of documents under their control relating to the matter being investigated and to verify any copies by statutory declaration; or
- attend at a specified time and place and give evidence or produce any documents.



Powers (3)

- To require any person to give a statement under oath
- With a magistrates warrant to enter premises and to seize documents, data, to require any person on the premises to explain any document or information or to state where it can be found
- To take interim steps to protect the assets of a charity including appointing new trustees, and vesting any property in the Custodian of Charity Property
- To freeze charity property
- To remove trustees



Powers (4)

But...

The Charity Commission must be satisfied that there has been

- a failure to comply with an order or direction of the Commission;
- a failure to remedy any breach specified in an official warning
- any other misconduct or mismanagement in the administration of the charity.



Qualifications to Powers

Charity Commission must act in a way that is

- proportionate;
- accountable;
- consistent;
- transparent; and
- targeted only at cases in which action is needed.



Offences

Specific Offences under the Charities Act

- Knowingly or recklessly providing information to the Commission that is false or misleading.
- Wilfully altering, suppressing, concealing or destroying any document that is required to be produced to the Commission under the Charities Act

Up to 2 years imprisonment



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Mind How You Go!



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Risk Toolkit



Review safeguarding and governance arrangements

Know your charity and its structure

Think about risks and use common sense

Manage risks and employ professionals when appropriate

Charity Governance Code

Code of Conduct for Trustees

Main Risks

- Not understanding structure and risks/liabilities
- Reputation
- Funding and donations
- Insurance/investments
- Not complying with legislation
- No “get out of jail free card”
- Data Protection
- Employment
- Trustees Behaving Badly
 - Recruitment and training
 - Management
 - Exit!



And finally...

Any questions?



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Upcoming Events

Spring briefings

- Norwich: Tuesday 20th March
- Sheringham: Wednesday 22nd March
- North Walsham: Tuesday 27th March
- Fakenham: Wednesday 28th March

GDPR Training Session

- Tuesday 24th April (Norwich)

Trustee Training Sessions

- Wednesday 6th June (Morning)
- Thursday 7th June (Evening)

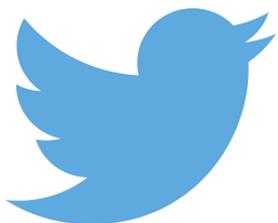


Thank you...

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