

Tuesday 26th February 2019

The Business of Charities 2019: Keeping Ahead of the Curve

Presented by:

Neale Grearson

Partner and Head of Charities Dept

Nicola Strefford

Solicitor and Head of Employment Law Dept

Philip Lumb

Partner and Litigation Solicitor



CLAPHAM &
COLLIDGE
SOLICITORS

Neale Grearson

Partner and Head of Charities

Department



CLAPHAM &
COLLINGE
SOLICITORS

“ There is no room for complacency about the state of trusteeship. Trustees do not reflect the communities that charities serve. They are disproportionately older, highly educated and white; men outnumber women by two to one and three-quarters earn above the national median household income. ”

Charity Commission response to the ‘Taken on Trust’
research of charity trustees – November 2017



CLAPHAM &
COLLIDGE
SOLICITORS

Charities Health check 2019

- Is a charity a business?
- Trust in charities
- Understanding what being a trustee means
- Trustee vs committee volunteer
- Education of trustees
- National “Competition”
- Corporate Responsibility
- Recruiting and retaining trustees
- Challenges for small/medium sized charities



Trust in Charities 2018

Research in public trust and confidence by
Charity Commission

- July 2018

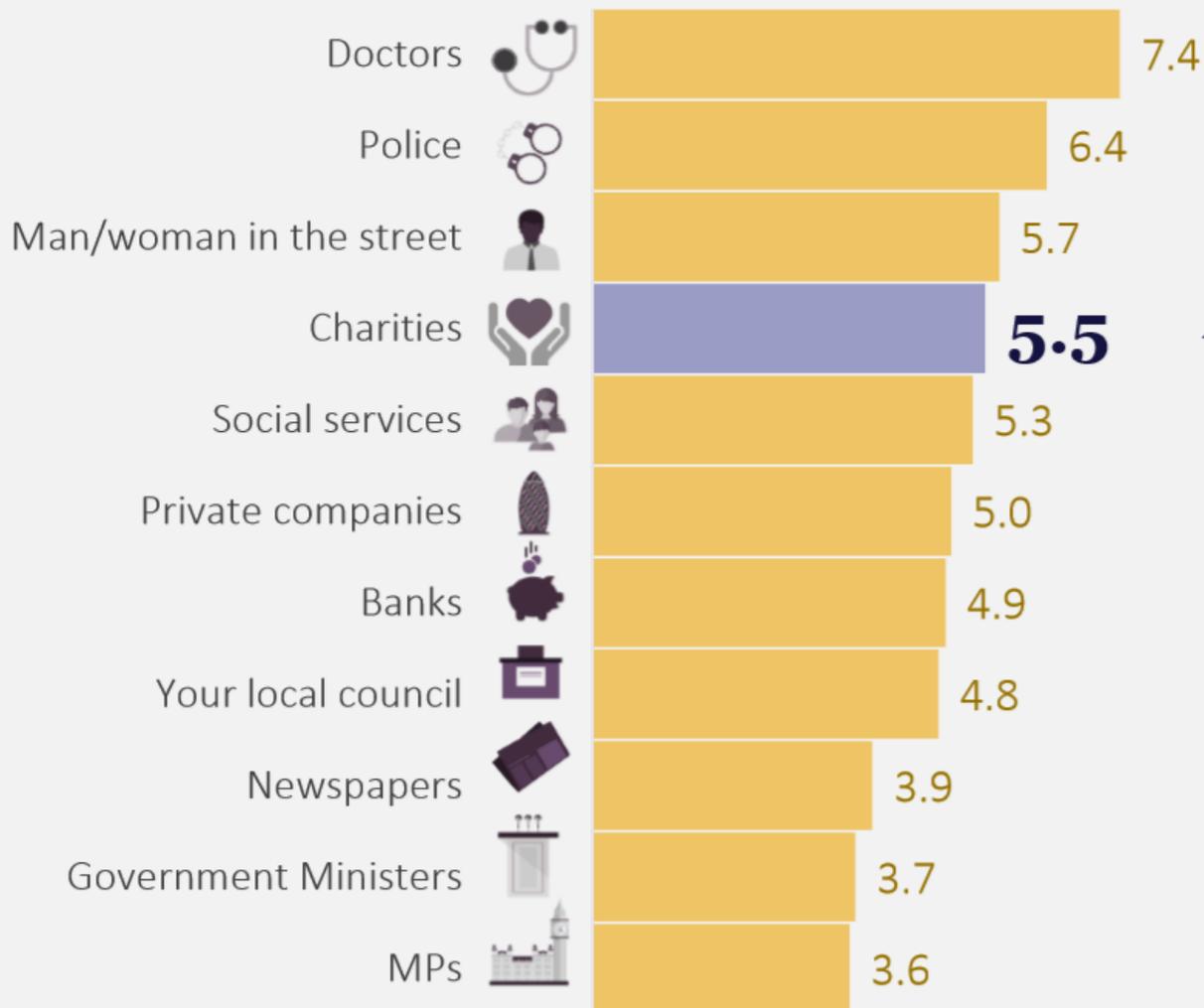


CHARITY COMMISSION
FOR ENGLAND AND WALES



CLAPHAM &
COLLINGE
SOLICITORS

Mean trust and confidence by sector/group /10



Up 1

Trust in charities **has not fallen relative to other sectors**. In fact, it has moved up one 'rank' since 2016.



However, trust in charities remains lower than trust in **the average man or woman in the street**.

The factors which make charities trusted



The Essential Trustee

6 main duties



Being a Trustee

- Recruitment
- Responsibilities and role
- Risk
- Governance
- More than Committee member
- Structure
- Education
- When to take advice
- Succession planning
- Code of conduct
- A “bad” trustee
- Policies
- Why bother?



General Data Protection Regulation

- Came into operation on 25th May 2018
- Did life change on 26th May 2018?
- Brexit!
- Data breaches
 - Compensation
 - New PPI
 - Trust and confidence
- Sheraton Hotel Group – November 2018
- £500,000 fine to Facebook
- £120,000 fine to Heathrow Airport



General Data Protection Regulation

“Data Protection is a boardroom issue and it is imperative that businesses have the policies, procedures and training in place to minimise any vulnerabilities of the personal information that has been entrusted to them”

- ICO Director of Investigations

- No “get out of jail free’ card for charities.



CLAPHAM &
COLLIDGE
SOLICITORS

ICO Risk review of Charities (April 2018)

- Communication of policies to staff and volunteers
- Training;
 - Annual refresher
 - Induction
 - Staff and volunteers
- Business Continuity Plans
- Documented reporting procedures
- How to rate risks
- Retaining data too long (indefinitely!)
- Majority of data processed for fundraising



Nicola Strefford
Head of Employment Law



CLAPHAM &
COLLINGS
SOLICITORS

Today's discussion

- **Charities as Employers**
 - What are the obligations?
 - Dignity in the workplace
 - Mitigating the risks
- **Employment status of staff**
 - The distinction between the categories
 - Indicators of employment relationship
 - Benefits of volunteer agreements



Charities as Employers

- **The law**
 - Employment Rights Act 1996
 - National Minimum Wage Act 1998
 - Working Time Regulations 1998
 - Pensions Act 2008
 - Equality Act 2010
- **Acas**
 - Grievances and Disciplinary
- **Staff handbooks and policies**
 - Dispute resolution



Top tips...

1. Review your documents
2. Consider having a HR subcommittee in the board
3. Outsourcing an investigation
4. Welcome settlement negotiations
5. Maximise employee output
6. Stay on top of Pension schemes
7. Be aware of the status and obligations owed to volunteers



Dignity in the workplace



OXFAM



Save the Children



CLAPHAM &
COLLINGE
SOLICITORS

Mitigating the risks

- Robust work policies
- Charity Commission: Safeguarding Strategy
- National Council for Voluntary Organisations: Code of Ethics



Employment status of staff

Why is the distinction important?

- Core legal protections
- Acas Code of Practice
- TUPE Regulations
- Vicarious liability
- Liability insurance
- Health and safety



A Comparison of rights



Volunteers have no employment rights.



Self employed contractors have no employment rights.



Workers have limited employment rights.



Employees have full employment rights.



Definitions by law...

An employee is defined as:

"an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment" (section 230(1), Employment Rights Act 1996 (ERA 1996)).

A contract of employment means:

"a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing" (section 230(2), ERA 1996).



Case law: key indicators of an employment relationship

- Personal service and mutuality of obligation
- Control
- Contract of service

(Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 2 QB 497)



Volunteers... A grey area

- No mutuality of obligation between the volunteer and the organisation
- The legal status of volunteers is not clear-cut
- This ambiguity makes it difficult for organisations to appreciate any legal obligations that they may owe to volunteers



Are they really a volunteer?



CLAPHAM &
COLLINGS
SOLICITORS

Practical tips for reducing the risk of a legally binding contract

- Avoid making payments
- Remove/minimise perks
- Reduce obligations on the part of the volunteer
- Avoid using language that makes the arrangement sound contractual
- Treat volunteers fairly



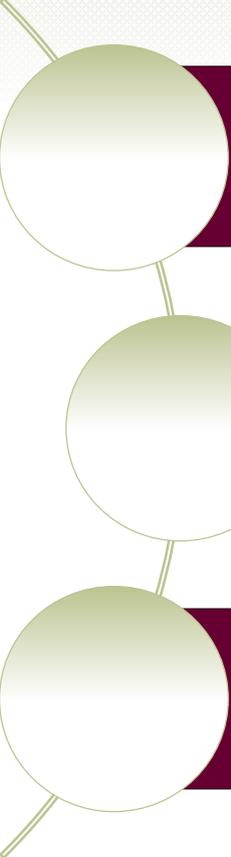
Volunteer agreements

What do they include?

- The volunteer's role
- Induction and training
- Supervision, support and flexibility
- Expenses
- Insurance
- Health and safety



Summary



Understand your obligations as an employer

Ensure all individuals are protected against bullying and harassment

Look after your volunteers

Philip Lumb

Partner and Litigation Solicitor



CLAPHAM &
COLLINGS
SOLICITORS

What I will cover in my talk...

- **Contested probate litigation**
 - What is it, how common and important is it
 - How do people contest a will or probate
 - What happens if they succeed
 - Impact of *Ilott v Mitson*
- **Role of charity trustees in litigation**
 - Duties
 - Personal risk
 - Mitigation of risk



Contested probate litigation (1)

- What do we mean by contested probate litigation?
- How common is it?
- How important is it to charities?



Contested probate litigation (2)

- **How can people contest a will or probate?**
 - Lack of consent
 - Undue influence
 - Lack of knowledge and/or approval of the terms of a will
 - Inheritance Act (Provision for Family and Dependants) Act 1975



Contested probate litigation (3)

- **What happens if they succeed?**
 - Lack of consent – will is invalid
 - Undue influence – will is invalid
 - Lack of knowledge and/or approval of the terms of a will – will is invalid
 - Inheritance Act (Provision for Family and Dependants) Act 1975 – terms of will effectively amended



Impact of Ilott v Mitson

- Recap of the facts and decisions
- What did everyone say at the time?
 - Solicitors
 - Media
- Has anything changed?
 - Our experiences
 - Your experiences



CLAPHAM &
COLLINGE
SOLICITORS

Ilott v Mitson

Daily Mail



CLAPHAM &
COLLINGE
SOLICITORS

Role of trustees in litigation (1)

- Duties of trustees in litigation
- General principles to guide trustees:
 - To act in the charity's best interests when bringing/defending claims
 - To protect their charity's assets, including taking steps to recover assets belonging to the charity
 - To spend funds only in carrying out the aims of the charity
 - To take and consider legal advice



Role of trustees in litigation (2)

- Implications for a charity involved in litigation
 - Financial cost
 - Time involved
 - Reputational damage



Role of trustees in litigation (3)

- Personal risks to trustees
 - Can be held personally responsible for consequences that flow from a breach of their legal duties
 - Pay damages, personally
 - Pay charity's costs, personally
 - Pay successful party's costs, personally
 - Can be disqualified as a trustee
 - Personal reputation damaged



Role of trustees in litigation (4)

- How can trustees mitigate their personal risk?
 - Read guidance literature – Charity Commission guides are excellent
 - Understand your personal risk
 - Take appropriate advice, including legal advice
 - Record all discussions and decisions
 - Consider insurance policies



And finally...

Any questions?



CLAPHAM &
COLLINGS
SOLICITORS

Our next charity event...



NORFOLK'S BIG CHARITY CONFERENCE 2019

WEDNESDAY 12TH JUNE | 9.15AM - 1.00PM | THE SPACE, NORWICH NR7 8SQ

LarkingGowen.
Chartered Accountants

 **ALAN
BOSWELL
GROUP**

SPALDING
CHARTERED SURVEYORS
& Co. www.spaldingandco.co.uk

Upcoming Events

- Dementia Training Workshop (Wednesday 13th March)
- Family Law Briefings (details included in packs)
- Charities Conference (details included in packs)
- Lunch on the Green 2019 (Wednesday 10th July)

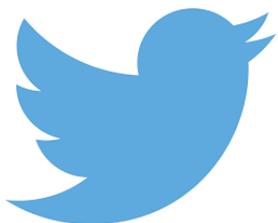


Thank you...

01603 693500

info@clapham-collinge.co.uk

www.clapham-collinge.co.uk



CLAPHAM &
COLLINGS
SOLICITORS