AUTUMN **2015** NEWSLETTER

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Legal Advice for Charities & Social Enterprises

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We hope that you enjoyed the summer, particularly the glorious Indian summer in September (photos of which are featured in this newsletter). There have been plenty of changes taking place in the world of charity law and this newsletter features some of the key ones which may be of interest.

Tessa Hennessy

CHARITY COMMISSION PUBLISHES NEW GUIDANCE FOR TRUSTEES

In the Spring we reported on progress with the re-write of the CC's guidance "The Essential Trustee". The revised guidance was published in July and the aim is to make it clearer and more concise as well as to ensure that no trustee is in any doubt about what's expected of them. The new guidance breaks down the trustee's role into 6 main duties which are to:

- Ensure your charity is carrying out its purposes for the public benefit
- Comply with your charity's governing document and the law
- Act in your charity's best interests
- Manage your charity's resources responsibly
- Act with reasonable skill and care
- Ensure your charity is accountable

One of the changes made by the CC is to the meaning of "should" in the context of what are a trustee's legal duties and what is recommended good practice. The new guidance states that "should" means "something that is good practice that the commission expects trustees to follow and apply to their charity". This means that trustees will need to comply with specified good practice unless they justify not doing so.

If you've not read the guidance we urge you to do so. The CC (which is becoming a tougher and more interventionist regulator) will expect every trustee to have read it as part of their "essential reading". The guidance can be downloaded from the CC's website:

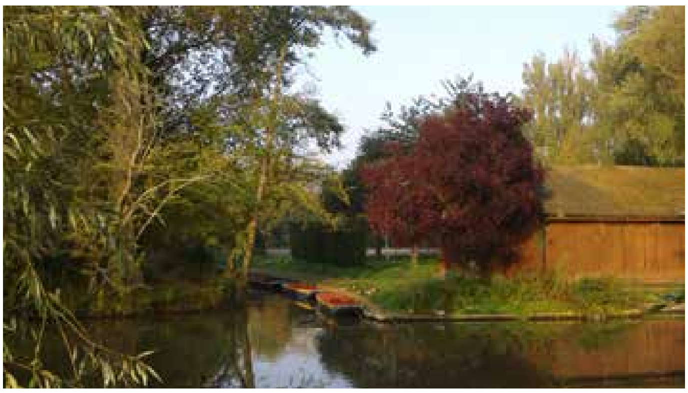
https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3/the-essential-trustee-what-you-need-to-know-what-you-need-to-do

COMPANY LAW CHANGES AFFECTING CHARITABLE COMPANIES

The snappily-named Small Business, Enterprise and Employment Act 2015 came into being on 1st October 2015.

While the Act deals with a broad range of issues as the name implies, it includes some regulatory changes which will affect charitable companies. These include the abolition of the requirement to file an annual report with Companies House (from June 2016 this will be replaced with an annual compliance statement), the general prohibition on the use of corporate directorships (see below), an obligation on companies from April 2016 to keep a register of people exercising significant control over the company, an option for companies to hold all their registers with Companies House and a duty on Companies House to notify new company directors of their statutory duties.

There is currently speculation as to whether the prohibition on corporate directors (which is aimed at greater transparency) will be implemented given a backlash in the business community to this change, and also whether there will be an exception for charities which have corporate directors. So it's a case of watch this space.



INTRODUCING REGULATORY CHARGES FOR CHARITIES

The introduction of regulatory charges for charities for registration and submission of annual reports was first mooted by Lord Hodgson in his review of the Charities Act 2006 three years ago. This is now looking more likely following a speech made by William Shawcross, chairman of the Charity Commission, made at the Commission's annual public meeting in September 2015. At the meeting he told attendees that it was "inevitable" that charges would be introduced and implied that this was likely to be in the next 12 months.

The context for this is the CC's funding being reduced by nearly £9 million since 2010/11 to just over £20 million in the current financial year. Public consultation on the introduction of charges is likely to be launched later this year. We will let you know the details in our next newsletter, due out in Spring 2016.

NEWS FROM THE CHARITY LAW ASSOCIATION ANNUAL CONFERENCE

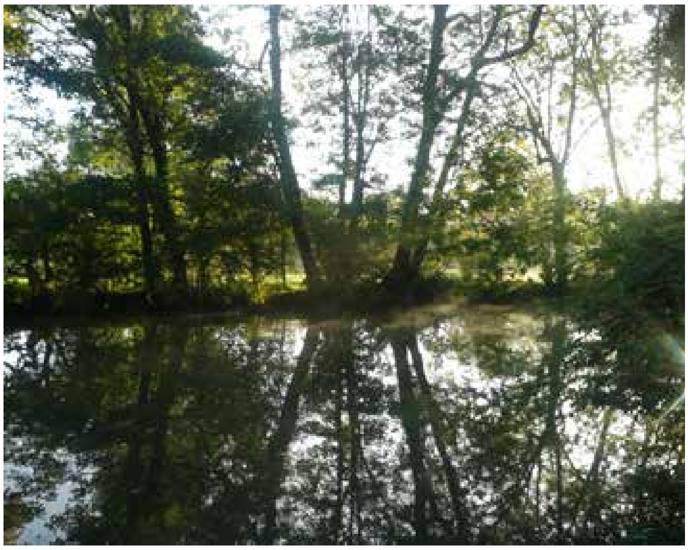
On 8th October we attended the CLA's annual conference. This is a good way of keeping up to date with all the latest changes in charity law and regulation but also a chance to network and "chew the cud" with other charity practitioners. This year was no exception.

Not surprisingly there was a lot of talk about the new powers which the CC is due to receive under the re-named Charities (Protection & Social Investment) Bill which is currently going through the parliamentary process and which we featured in our last newsletter.

Inevitably charity fundraising practices cropped up in the light of revelations of bad practice over the summer, the resulting media feeding-frenzy and the recently announced recommendations of the Etherington Review to set up a new fundraising regulatory body in 2016. Kids Company also cropped up as you'd expect; no, we're not going to cover that one – the CC is currently investigating what went wrong and will be reporting in due course.

Interestingly we learned from the civil servant who heads up a small team in the Office for Civil Society at the Cabinet Office that the company/CIO conversion regulations should be ready for consultation in the next few months.

Clients have been asking us about the possibility of conversion from a charitable



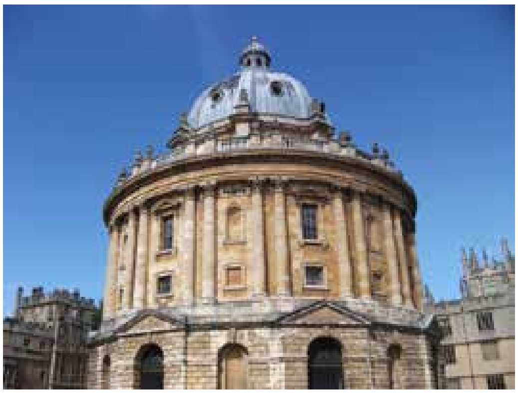
company to a CIO (charitable incorporated organisation) so we're relieved to hear that this is going ahead. However the introduction of the regulations, once they've been finalised and have passed through Parliament, is likely to be phased (as was the introduction of CIOs) mainly to help the CC manage the anticipated demand for conversion. If your charity is waiting on this, our conservative time estimate is late 2016 or early 2017 and possibly later depending on the phasing timetable. If you would like to be kept in touch with developments let us know and we'll add you to our CIO conversion database.

IMPORTANT NEW CONSUMER LAW FROM 1ST OCTOBER 2015

Any business (which includes charities or their trading subsidiaries) providing goods and/or services will need to take steps to comply with the new Consumer Rights Act 2015. This statute came into force earlier this month and brings together a hotchpotch of consumer protection laws and regulations under one "roof". It also grants some new rights to consumers including a right to reject defective goods within 30 days of purchase and receive a full refund. After that a consumer will have the right to require a repair or replacement. Importantly, digital content is now covered by the Act meaning that just like goods, content downloaded from the web must be of satisfactory quality and fit for purpose.
If your charity supplies goods and/or services all those involved in such activity will need to be up to speed on the latest changes. You may also need to review yours terms of business to ensure that these are fair – a revised list of potentially unfair terms is included in the Act, and the question of fairness will now also to extend to the price where this is not transparent.

AND FINALLY...

Some stats from the Charity Commission.
The regulator has had a busy year: they handled 7,192 new charity applications in the period 2014/15 of which 4,648 were approved. This equates to around 65% being approved; in other words 35% of applications made were rejected. In the same period the CC opened 104 statutory enquiries, surely a record number, and dealt with 442 monitoring cases and 133 assessment cases.



ABOUT US

Tessa Hennessy Solicitor is a specialist legal practice providing advice on a range of governance and regulatory issues for voluntary and community organisations including social enterprises.
Founded in 2008 and based in Oxford the firm provides a responsive, personal and friendly service.
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