



AUTUMN 2016
NEWSLETTER

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Legal Advice for Charities & Social Enterprises

We hope that you enjoy reading our latest newsletter. If you would like more information about any of the topics covered, please do not hesitate to contact us.

Tessa Hennessy

NEW FUNDRAISING REGULATOR LAUNCHES

In July 2016 the new Fundraising Regulator (FR) was launched and took over responsibility for fundraising from the Fundraising Standards Board. With a stated remit to “set and maintain standards for charitable fundraising”, the FR aims “to ensure that fundraising is respectful, open, honest and accountable to the public”. Funded by a voluntary levy on those charities in England and Wales spending more than £100,000 per year on fundraising, the FR will have particular relevance to larger charities, some of which have been subject to intense media scrutiny in recent months. The FR will adjudicate on and resolve issues that may arise between members of the public and charities without the need for statutory intervention. While it does not have judicial powers, the FR has entered into memoranda of understanding with both the Information Commissioner’s Office and the Charity Commission; under these memoranda the FR will share information on any potential breaches of rules by charities which could in turn result in regulatory action being taken.

Speaking at the annual Charity Law Association conference in early October the chief executive of the FR told delegates that they had already dealt with over 230

complaints received from the public about fundraising and were investigating a Bristol-based fundraising agency (and those charities using them to seek donations from the public).

Charities which fundraise from the public should ensure that proper fundraising practices are being followed and include fundraising as a regular topic for discussion at board meetings. This will go a long way to ensuring that trustees are aware of what fundraising activities are taking place within the charity for which they have responsibility. The FR will be consulting on possible changes to the Code of Fundraising Practice early in 2017. A consultation on a proposed new “fundraising preference service” which would give individuals the right to opt-out of being contacted by charities, recently ended and the regulator is now considering how such a service could be implemented and the likely costs associated with this. It should be noted that different regulatory arrangements apply to charities based in Scotland.

More information about the FR and the existing Code of Fundraising Practice can be found at:

<https://www.fundraisingregulator.org.uk/>

CELEBRATING TRUSTEES

If you're a charity trustee you will probably know that Trustees' Week took place from 7-13th November providing an opportunity to celebrate the principle of volunteer trusteeship and the work of over 900,000 trustees across the country.

The focus this year was on "Stronger charities through good leadership" with the Charity Commission reminding trustees that despite the increase in focus, the legal responsibilities of trustees remain unchanged. Many events took place across the country, from seminars and conference to webinars. As part of the celebrations, we were asked by Voluntary Action Swindon to deliver a talk to 20 trustees at their offices.

We used this opportunity to remind those attending of the duties and responsibilities of charity trustees.

Our talk focussed on the 6 main duties of trustees as set out in the Charity Commission guidance CC3 The essential trustee: what you need to know, what you need to do.

Described by a senior employee of the Charity Commission at the Charity Law Association conference as the "trustee's shield", these duties are:

- **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**



Tessa Hennessy presenting at Voluntary Action Swindon

In relation to the duty of accountability, trustees have a duty to prepare and file with the Charity Commission their annual return and accounts within 10 months of the charity's financial year end. With most charities having 31st March as their year end, the deadline for filing is 31st January.

We strongly recommend that accounts are prepared, independently examined (or audited if required) and finalised by the board of trustees well in advance of this date to avoid any last-minute glitches with filing them with the Commission. It should be borne in mind that failure to submit accounts where these are required is a criminal offence and is considered by the Commission as a sign of wider governance issues.

SEMINAR PROGRAMME 2017

Following on from a series of successful seminars delivered in 2016 we are planning to deliver some “good governance” seminars in 2017 aimed at charity trustees. The first of these will be co-delivered in Oxford with an accountant who specialises in working with charities and not for profits in late February/early March. Full details have yet to be confirmed. If you would like to know more about our seminar programme please contact us and we will add your name to our mailing list.

THE CHARITY COMMISSION GETS NEW POWERS

In our Spring newsletter we reported that the Charities Act (Protection and Social Investment) Act 2016 received royal assent in March. Many of the provisions of the Act are now in force, the latest being the power for the Charity Commission to disqualify individuals from being trustees and the more controversial power (from 1st November) for the Commission to issue official warnings to a charity or a charity trustee where there has been a breach of trust or duty or other misconduct/mismanagement.

Mindful of the concerns of the charity sector, over the summer the Commission carried out a consultation exercise on the use of its new power to issue (and publish) official warnings. They have said that they will use the responses received to help shape their approach to using this new power.

New fundraising provisions also came into force on 1st November. These are of particular importance to those charities with an annual gross income exceeding £1 million per year. These charities will need to include in their annual report information about their fundraising practices including their approach to fundraising, any use of professional fundraisers/commercial participators, how the charity has monitored its fundraising activities (and the number of complaints received, if any) as well as what steps the charity has taken to ensure that people in vulnerable circumstances are protected from unreasonable fundraising behaviour.

The Act also includes new provisions concerning the terms to be added to agreements between charities and professional fundraisers or commercial participators. These cover fundraising standards, protection of vulnerable people (as mentioned above) and monitoring.

NEWS IN BRIEF

- Updated guidance for trustees on their duties in relation to fundraising was published by the Charity Commission in June 2016 and can be found at:

<https://www.gov.uk/government/publications/charities-and-fundraising-cc20>

We would urge trustees to look at the guidance and ensure that they are complying with what the regulator expects of them. The new guidance sets out 6 principles which trustees should follow and includes a useful checklist against which trustees can evaluate the performance of their charity against the advice in the guidance.

- In our Spring newsletter we reported on the proposals for existing charitable companies and community interest companies to convert to a charitable incorporated organisation (CIO) and the draft timetable for this. We understand that the enabling regulations have been delayed. This means that provisional timetable (which would have seen the first tranche of converts from 1st October) has been put back.

The final regulations and publication of a new timetable are awaited and we hope to report on progress in our next newsletter. If your charity is a company and you wish to convert to a CIO, please contact us and we will add you to our CIO update list.

- The Charity Commission has recently announced that the regulator will be consulting early next year on plans to raise funds from the charity sector to pay for regulation. This has been on the cards for some time now and comes in the context of the Commission's resources being halved in real terms since 2008.

Early indications are that the annual charge would be on a sliding scale depending on the size of the charity and that smaller charities (those with an annual income under £20,000) would be exempt from charges. We hope to include information about likely charges/exemptions in our next newsletter.

- And finally.....we have recently joined the social media revolution with the launch of our **Facebook page** where we post regular updates. You can take a peak at:

<https://www.facebook.com/Tessa-Hennessy-Solicitor-189291611497172/>

ABOUT US

Tessa Hennessy Solicitor is a specialist legal practice providing advice to voluntary and community organisations on a range of constitutional, governance and regulator issues. Based in Oxford and founded in 2008, the firm provides a responsive, personal and affordable service.

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