



# Spring Newsletter

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## Kids Company directors win High Court case

The former directors of charity “Kids Company” have successfully defended court proceedings brought by the Official Receiver (OR) to disqualify them on grounds of unfitness. The proceedings, which were issued in 2017, were finally heard in late 2020, with the judgement handed down in February. The OR’s case was that the directors of the charity (who were trustees in charity law) and the chief executive should be disqualified on grounds that the charity’s business model was unsustainable.

The charity’s chief executive was a co-defendant on the grounds that she was a “de facto” director.

The High Court Judge who heard the case ruled against the OR and made a range of useful observations which should provide some comfort to trustees when faced with difficult financial decisions.

The case is significant particularly for charitable companies where directors are effectively unpaid non-executives, delegating day to day decision-making to senior members of staff. This was recognised by the Judge who was satisfied that the directors had exercised appropriate supervision over the chief executive and also that they had acted within the range of what was reasonable in terms of decisions about the future of the charity’s finances. The Judge also recognised that though aspects of the charity’s business model were “high risk” and there were cash flow problems, this did not mean its business model was unsustainable.

The Judge was critical of the OR for not having a better understanding of how many charities operate in practice and recognised the importance (and value) of charity trustees and the detrimental impact which threats of disqualification would have. Had the decision gone the other way, there would have been many trustees considering resignation and potential new recruits put off charity trusteeship.

The Charity Commission inquiry into Kids Company was put on hold pending the outcome of the court case. The inquiry will now be concluded with the report expected later this year.

## Covid-19 guidance for charities

There have been copious amounts of guidance for charities during the pandemic, including that issued by the Charity Commission, first published in April 2020, and updated several times since. This guidance covers a range of practical topics for trustees from: holding (or postponing) AGMs or other charity meetings; dealing with financial difficulties and use of restricted funds; to working with others to help with coronavirus.

Early on in the pandemic, the charity regulator was keen to reassure charities that their approach to regulation would be “flexible and pragmatic” and this has certainly been the case.

However, their regulatory work has continued and the Commission has not hesitated to act when things have gone wrong in charities. As a result of increased demand during the pandemic, the Commission has extended its contact centre opening hours. The centre is now open 9 am to 5 pm Monday to Friday telephone number 0300 066 9197.

The full Covid-19 guidance for charities can be viewed at: [www.gov.uk/guidance/coronavirus-covid-19-guidance-for-the-charity-sector](http://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-the-charity-sector)

## Charity Commission Oxfam GB report

The Charity Commission has finally lifted its statutory supervision of Oxfam GB, two years after publishing a critical report on the charity which made many recommendations for improvements in culture and safeguarding practices. In a recently-published report, the Commission said they were satisfied that the charity had significantly strengthened its approach to keep beneficiaries, staff and volunteers safe. The report (which many in the charity sector felt was unduly critical of Oxfam) highlights the importance of safeguarding as a priority for all charities.

Safeguarding should be a topic for regular discussion at board level and safeguarding policies and procedures should be kept up to date with staff training provided. The Charity Commission's guidance on safeguarding stresses that "protecting people and safeguarding responsibilities should be a governance priority for all charities. It is a fundamental part of operating as a charity for the public benefit."

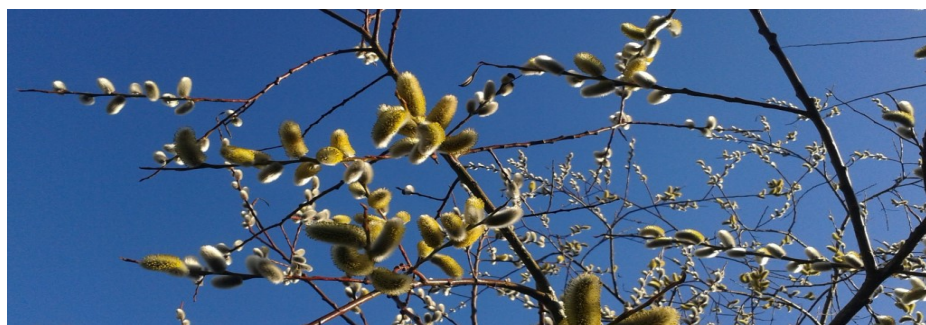
The safeguarding guidance can be viewed at: <https://www.gov.uk/guidance/safeguarding-duties-for-charity-trustees>

## Is it time to Spring clean your governing document?

When did you last dust off your charity's governing document and check whether it is still fit for purpose? It is recommended that you do this at least once every 5 years or sooner if new projects are proposed. It can be tempting for trustees to stray outside the charity's objects, particularly if these include a geographical limitation. Acting outside a charity's objects risks the trustees being in breach of trust.

Administrative provisions in a governing document can also become out of date. In the pandemic, many charities have found that their governing document does not permit virtual meetings (as opposed to meetings "in person") and will need to amend the governing document. While some changes, for example, to the objects of the charity are likely to need prior Charity Commission consent, it may be possible to make others relying on an express power in the document or using a statutory power of amendment in the Charities Act 2011.

If you are considering making changes to your governing document or feel that a review would be beneficial, do get in touch with us.



## Training for boards of trustees

We continue to provide bespoke training to boards of trustees on their duties and responsibilities.

At the moment, we are using Zoom for this but hope to be able to provide training face to face later in 2021. Please contact us if you are interested in finding out more.

## About Us

Tessa Hennessy Solicitor is a specialist legal practice providing advice to voluntary and community organisations on a range of constitutional, governance and regulatory issues. Based in Oxford and founded in 2008, the firm provides a responsive, personal and affordable service. For more information about us go to: [www.tessahennessy.co.uk](http://www.tessahennessy.co.uk)

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