

More lessons from charity commission investigations

1. The RSPCA have been issued with an Official Warning after a group of trustees failed to ensure they were sufficiently informed before making a settlement offer to the charity's former acting chief executive and failed to act with reasonable care and skill in negotiating with that Former acting CEO. This followed a significant pay-out in 2018 which prompted the Commission to examine the trustees' decision making.

The trustees were criticised for not ensuring that the decision was properly made, particularly given the large sums involved and the Commission concluded that the failings amounted to mismanagement. This is in the context as well of an unusually high turnover among its chief executives, and significant periods of time without a substantive chief executive in post.

It goes without saying that recruiting a chief executive is one of the hardest things' charity trustees can do, probably second only to parting company with one. In the latter circumstances good quality advice is essential at the very least from an HR specialist or even from a good quality HR lawyer. Each circumstance is different, but trustees have the added responsibility of ensuring that their decisions are both in the best interest of the member of staff but also the charity itself and its beneficiaries and it is even harder when the charity is within the public eye.

2. A statutory enquiry has been opened in respect to a charity whose objects are the relief of poverty of people in the UK, mainly in the Aylesbury area of Buckinghamshire. The enquiry has been opened because of concerns over its governance and administration.

Firstly, there appears to be only one trustee which means that any potential conflict of interest cannot be managed. Secondly the Commission have concerns over the charity's accounting and reporting which they say lacks clarity. Finally, they have concerns about whether the charity is using its resources in furtherance of its objects. Despite the objects set out above an examination of the annual report and accounts apparently shows the charity directing funding to several countries outside the UK for purposes outside its remit.

I very rarely report on cases where the results of an enquiry have yet to be published. However, in this case I am making an exception as the principal of acting "ultra vires" or "beyond the powers" of the charity are involved. Just because an application is made to a charity which may clearly be for charitable purposes does not mean the charity can apply funds to the charitable cause. The cause MUST be within the remit of the charity. It is why Trustees should always remind themselves what the criteria are for YOUR charity before making decisions about applying funds. Lots of charities have objects which were drafted many years ago and whose objects may not be fit for purpose for today's needs. If you have concerns about your constitution being fit for purpose, please contact me.

FAQ

FREQUENTLY ASKED QUESTIONS

Q. What does it mean when we say that our accounts are prepared on a "going concern" basis?

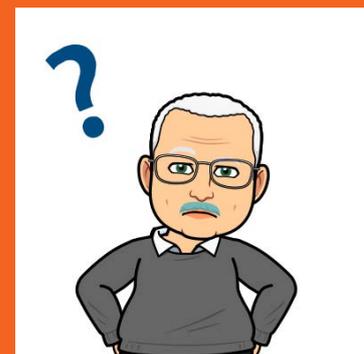
A. Many charities have seen a reference to the phrase "Going Concern" in the trustees report and you will always see a reference to this in your accounting policies. It will for some of you have been a subject of discussion at either a planning meeting or at the clearance meeting with your accountants.

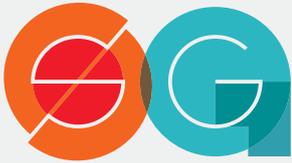
Sets of accounts are normally prepared on the "Going Concern" basis and it means that from the date of signing the accounts (note "signing the accounts" and not the year-end) both the trustees and auditors/ examiners agree that after the expiry of 12 months, the charity will still be existing and operating on a similar basis.

For those charities with significant reserves, this is usually not an issue but those charities who exist with low levels of reserves or those with perhaps very large pension deficits or known significant cuts in future funding need to be especially careful in demonstrating that these issues have been considered when signing off the accounts.

If the auditors/examiners are unable to reach an acceptable level of assurance, it may lead to a qualified audit/examination report which could create problems in dealing with potential funders who read the accounts and who may have second thoughts about funding a charity with perceived financial issues.

Trustees must consult at the earliest possible stage if they have any doubts so as to consider what steps need taking.





OTHER CHARITY COMMISSION NEWS

- A governance review of the constitution and composition of the Charities SORP committee and the SORP making process is due to report this year
- Out of 106 sets of charity accounts reviewed last year, the Charity commission gave 89 charities regulatory guidance to improve the quality of future trustees' reports and annual accounts.
- A sample of charities with income below £25k per annum showed that 38% were submitting inaccurate data. This improved to only 10% for charities over £25k and 5% for charities over £500k in respect of their Balance Sheet but 20% of these charities had inaccurate income and expenditure analyses
- A review of public benefit reporting by charities revealed that 48% of trustee's annual reports still failed to demonstrate a clear understanding of the public benefit reporting requirement
- A review of 106 sets of accounts with income of over £500k found that over 33% did not contain the basic information required of a reserves policy including the level of reserves
- CC47-Complaints about Charities has been updated

AND FINALLY

The Pitfalls of setting up a new charity

When setting up a new charity there is an obvious wish to save costs both in terms of making an application without professional guidance and, when drafting a constitution, by using the Charity Commission template. In many cases that is perfectly fine if the charity is particularly small but, I have found in two cases in the last year that failure to take advice has in one case led to the initial application being rejected and in another case creating a constitution with more holes than a swiss cheese!

A template is just that; a model to work on but it should always be tailored to the individual needs of the charity. A short term wish to save funds can lead to even greater time and cost of unraveling the mess.

A small investment right at the beginning can ensure you get it right first time.

A NEW WAY FORWARD

This will be my last newsletter as though they have been part of my role to get information out to charities, it has gradually been superseded by the blogs that I issue on a regular basis which attract a greater number of readers. All those who are on the mailing list will continue to receive my blogs via email and those who are not can either apply to be put on the list by emailing me at the address below or by following me on my [LinkedIn](#) or my [twitter](#) account. Thank you for your support over the last three years and I will continue to provide whatever help I can to the Charity world out there.



If you are a charity trustee and you and your charity are in need of advice on a strategic or governance matter, please telephone **Elliot Harris** on **07896 894711** or email **elliott@strategyandgovernance.co.uk** for a no obligation conversation.