

Charities Focus



Charities to take action to prevent exploitation of donors

A number of reports in the media over the last few months have drawn attention to, and led to a public outcry on, the apparently aggressive and alarming tactics used by some charities and fundraising agents to raise money from potential donors.

The catalyst for the sudden scrutiny over fundraising tactics was the death of Olive Cooke, Britain's longest-serving poppy seller, who committed suicide. It was suggested in the media that she regularly received an overwhelming number of letters and phone calls from charities asking for help and that this contributed to her anxiety and depression.

The Daily Mail then reported that the fundraising agency Go-Gen, which carried out campaigns on behalf of some of the UK's largest charities, had been making unsolicited calls to households registered with the Telephone Preference Service. The British Red Cross, NSPCC, Oxfam and Macmillan were all accused in the report of hounding vulnerable people for money despite being on an official 'no-call' list. Since the report Go-Gen has ceased trading and the Information Commissioner's Office ("ICO") has commenced an investigation into whether there were any data protection breaches.

The most recent case, again reported by The Daily Mail, is that of Samuel Rae who allegedly lost £35,000 after his information ended up in the hands of scammers. Samuel Rae, who is 87 years old and suffers from dementia, had his information shared more than 200 times after he carried out a survey over 20 years ago and failed to tick a box to state that he did not want his information to be shared. As a result,

Samuel Rae was reportedly contacted over 700 times and ended up conned out of large sums of money by fraudsters who had bought his details.

Both the ICO and the Fundraising Standards Board have launched investigations into the allegations made by the Daily Mail in respect of Samuel Rae's case. In the meantime, a number of Britain's leading charities have apologised for not having lived up to the high standards expected by the public. The charities have also stated that they will introduce a number of changes to prevent such abuse happening again, including:

- introducing an "opt-in" system which bans charities from passing on an individual's details without their express consent;
- banning telemarketing companies that are fundraising for charities from withholding their number;
- amending their code of conduct so that information for donors has to be the same size font as the rest of the literature; and
- creating an independent watchdog to fine those who break the rules.

Changes are clearly on the horizon, although the extent of such changes is yet to be seen with some in the industry critical on the proposals. Sir Stephen Bubb, chief executive of Acevo (which is the trade association for charity chief executives) commented that... "less asking means less giving. We

are talking about tens of millions of pounds being lost through these changes". However, with the Government now taking an interest in the position, it may well be that changes to the legislation will force charities into action.

All charities engaging in public facing fundraising need to be conscious of the reputational risks of a potential "Olive Cooke" or "Samuel Rae" situation and also abide by data protection legislation when handling and processing supporters' personal data. The Information Commissioner has powers to issue substantial fines to charities that breach data protection legislation and is not reluctant to use these powers (having issued substantial fines to non-compliant charities in the recent past). Charities are therefore advised to seek advice about compliance and to review their data protection policies to ensure that these are adequate and up to date. We can assist with reviews and putting in place such policies if required.

David White

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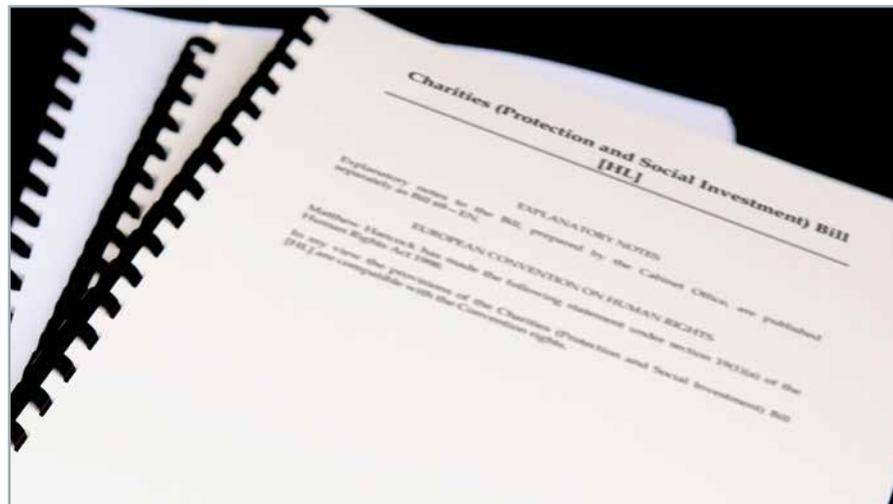
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Charities (Protection and Social Investment) Bill update

The Charities (Protection and Social Investment) Bill is scheduled for its final reading in the House of Lords on 14 September 2015. This is a chance to further amend the Bill before it is put before the House of Commons.

It will be interesting to see what further amendments may be proposed particularly in the light of all the recent controversy surrounding some charities' fundraising practices.

Primarily the aim of the Bill is to protect charities in England and Wales by enhancing the Charity Commission's powers to tackle abuse of charities to better equip it to maintain public trust and confidence in charities.



Such enhanced powers include:

- Power to disqualify individuals from acting as trustees in relation to all charities, specified charities or classes of charity;
- Issuing statutory warnings to charities or charity trustees in the event of breaches of trust or duties or failure to comply with the Charities Act 2011 or Orders or Directions of the Charity Commission;
- Power to suspend a trustee for an extended period of up to 24 months;
- Directing trustees to wind up a charity and transfer the charity's assets elsewhere and increased powers to direct the application of charity property; and
- Statutory powers for trustees to make social investments that aim to make a financial and a social return.

The contents of the Bill are indicative of the Charity Commission's desire to be seen as a regulator with "teeth" and to focus the Charity Commission's resources upon tackling abuses. We will continue to keep charities up to date with the progress of the Bill through our website and publications as it will be relevant to all charities when brought into law.

Gerry Morrison

Charity Commission launches statutory enquiry into Kids Company

The Charity Commission has announced that it is undertaking a statutory enquiry into Kids Company to investigate concerns around its administration, governance and financial management.

The charity announced it was closing on 5 August this year following a number of adverse media reports criticising its operations and an alleged lack of financial management.

Allegations included that charitable funds were being used to pay private school fees for the daughter of Kids Company's founder, Camilla Batmanghelidjh's chauffeur.

The purpose of the enquiry is to address the concerns raised and identify wider lessons out of Kids Company's demise for other charities and trustees.

The Charity Commission is liaising with a number of statutory and public agencies including the Insolvency Service.

One of the criticisms of Kids Company is that it allegedly failed to maintain an appropriate level of reserves which led to its collapse when expected donations did not materialise or were not sufficient to meet its ongoing commitments.

Whilst we cannot predict the outcome of the enquiry and what wider lessons the Charity Commission may identify for other charities and trustees, we can speculate that it will include the importance of maintaining an appropriate level of reserves, adhering to and having a suitable reserves policy and ensuring good financial management. It may also include issues such as using charity funds to pay for private school fees on behalf of charity employees and whether the terms and conditions under grant agreements with government and other funders were breached (e.g. whether funds were used for purposes outside of those terms). The Charity Commission may also identify wider lessons for charity trustees including their role in ensuring good financial management and overseeing effective governance.

These issues are common to all charities and not just charities of the size and high profile of Kids Company. In the light of cases such as Kids Company and the Charities (Protection and Social Investment) Bill looking to introduce greater powers for the

Charity Commission to tackle abuses, charity trustees need to be vigilant to ensure their organisations uphold sound administration, governance and financial management.

We can provide trustee training for any organisations wishing to find out more information.

Gerry Morrison



Trustees' personal benefits

Staying on the right side of the law

The Charity Commission published a report into Surf Action on 20 August in the light of concerns raised by a former employee about how the charity was being run. It was alleged that the charity's trustees were personally benefiting from the charity in breach of the charity's governing document.



The Charity Commission then launched an inquiry to establish whether there was any foundation to the allegations.

Surf Action is a military charity based in Cornwall promoting and protecting the physical and mental health and welfare of people who have been wounded whilst serving in the armed forces or civilian emergency services, helping people to deal with the ongoing problems of post-traumatic stress disorder by introducing them to surfing and other peer group activities.

The Charity Commission found that Surf Action had originally been incorporated as a Community Interest Company ("CIC"). CICs are not charities, but have aims that are primarily for community benefit. A charitable company was subsequently established to take over and run Surf Action's activities (i.e. the organisation changed its structure from a CIC to a charitable company). In line with additional legal requirements placed upon charities that CICs are not subject to, the new charity's Articles of Association prevented its directors (i.e. trustees) from receiving remuneration from the charity.

The Charity Commission found that there had been a fundamental misunderstanding of charity law because the former CIC's employees were appointed as directors of the charity. The Charities Act 2011 regards directors of charitable companies as charity trustees. Therefore additional rules and

regulations around trustees receiving personal benefits and remuneration from the charity applied. The directors were unaware of this and appointed other people to serve as "trustees" of the charity. However, as these other people called "trustees" were not directors of the charitable company, they were not recognised in law as being charity trustees.

The directors of the charitable company, who were regarded as charity trustees for the purposes of charity law, were paid for the roles they performed in the charity, and because they were deemed to be charity trustees, this amounted to unauthorised private benefits in breach of the charity's Articles of Association.

The Charity Commission raised concerns about the trustees' lack of understanding of basic charity law and running a charity and their poor knowledge of best practice. We do not know whether Surf Action took professional advice when it converted from a CIC to a charity and also in terms of the different regulatory frameworks that CICs and charities are subject to. However, on any restructuring we would strongly advise charities to take professional advice to avoid a Surf Action-type of situation and being on the receiving end of a Charity Commission inquiry.

The Charity Commission required Surf Action's directors to immediately cease

benefiting privately from their roles in the charity and they agreed to stand down. The people who had been called "trustees" but who were never appointed directors of the charitable company and therefore had no legal standing were initially appointed in their place. New trustees were subsequently recruited to take the charity forward.

The new trustees appointed an operations manager and are making changes to ensure the charity upholds best practice in terms of governance and refocusing its objectives to better reflect its activities and beneficiaries' needs.

The Charity Commission identified wider lessons for other charities and charity trustees in its case report including:

- **Know who your trustees are and what their role and responsibility is:** A charity's trustees are the people who have independent control over, and legal responsibility for, a charity's management and administration as per the Charities Act 2011. This is the case despite the fact they may be known within the charity by a different name (e.g. director, committee member or governor). A charity's governing document (which may be a constitution, trust deed, articles of association, etc) will explain which body has ultimate authority and responsibility for directing and governing the charity. All properly appointed members of this body are deemed charity trustees in law, whatever they are called and assume legal responsibility for the charity.
- **Trustees need to read and understand the charity's governing document:** It is vital that all trustees understand their role and responsibilities and the provisions in their charity's governing document including provisions around private benefits for trustees. Private benefits for charity trustees is a controversial topic, which can arouse strong feelings and failing to abide by the legislation can damage a charity's reputation (and the reputations of its trustees) even if the mistake was honest. Any charity with a governing document that does not authorise trustees to be paid, must seek the Charity Commission's prior consent before doing so. The Charity Commission emphasises it is a legitimate expense for trustees to seek professional advice when making important decisions.

Furthermore the case highlights the potential risks of an organisation converting from one legal structure to another (in this case from a CIC to a charity). We would always recommend that professional advice is taken for organisations wishing to restructure either to obtain charitable status or to amend an existing charity's legal structure from an unincorporated association to an incorporated body such as a Charitable Incorporated Organisation or Charitable Company.

We can provide further advice or guidance if requested.

Gerry Morrison

Charities urged to have regard to Direct Marketing Association guidelines

On 11 August 2015 the Direct Marketing Association (“DMA”) published a set of guidelines for call centres and organisations (including charities) engaged with telemarketing on how to identify and manage a call with someone they believe is unable to make an informed decision such as those living with dementia or mental health issues. The guidelines are relevant to all charities that contact potential donors or supporters by telephone (where such services are often delegated to fundraising agencies acting on the charity’s behalf). Charities using professional fundraisers or fundraising agencies must put in place a contract with the fundraiser or agency that meets legal requirements.



Recent high profile media cases where vulnerable people were allegedly exploited by fundraising agencies acting on behalf of charities have highlighted the issue of how charities identify and manage their relationships with vulnerable supporters.

The guidelines can be downloaded from the DMA’s website and include a decision making matrix, flashcards and a 64-page guide on caring for the vulnerable.

The objective of the guide is for telephone contact centre agents to gain a better understanding of the term “vulnerability” and for organisations to develop methods to help agents to deal with those vulnerable persons. The guidance aims to give organisations’ staff the necessary tools to help them recognise vulnerability.

The DMA’s guidance recognises that staff from marketing and fundraising agencies are not often equipped to deal with vulnerable persons or that they lack the confidence to. The guide also aims to assist organisations to deliver a consistent service in dealing with vulnerable persons.

The DMA’s guidance was based on a survey of 322 marketers in June and July 2013 which found that only 4% said they always knew when they were speaking to a vulnerable

person and 92% said that training would help to better meet vulnerable customers’ needs.

The guidance specifies different categories of vulnerable persons and includes contributions by Age UK, Alzheimer’s Society, National Autistic Society and Dementia Action Alliance.

The publication of the guidance comes after the Government’s announcement in July that it would be amending the Charities (Protection and Social Investment) Bill to include a requirement that all new contracts between charities and fundraising agencies must state how the vulnerable are protected.

There is a decision making matrix which is to be used in conjunction with the main guidance. The decision making matrix includes how to deal with vulnerable persons of different levels of understanding and comfortability. There are also caring for the vulnerable flashcards which describe a number of mental health disorders and list the charities which could provide support to individuals suffering from such disorders. All of the information can be found on the Direct Marketing Association’s website dma.org.uk. These guidelines are available to any charities or fundraising agencies that need the guidance even if they are not members of the DMA.

Charities managing relationships with supporters or engaging fundraising agencies to contact potential donors should be aware of the guidance. Adhering to it may form part of the steps taken to mitigate the risks of the charity being accused of mishandling a relationship with a vulnerable supporter. As above, all charities using professional fundraisers and fundraising agencies need to put in place a written agreement with the fundraiser or agency that meets legal requirements. We can provide further advice or guidance upon request.

Sarah Greendale

Information

If you have any queries on any issues raised in this newsletter, or any charity matters in general please contact Gerry Morrison on (01904) 625790 or email gerry.morrison@rollits.com

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful.

If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

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