CHARITIES REVIEW

SPRING 2018

AN UPDATE ON THE GENERAL DATA PROTECTION REGULATION
EVOLUTION, NOT REVOLUTION

PHISHING: IS YOUR CHARITY NEXT?

A LOOK AT SHOOTING STAR CHASE'S INVALUABLE NEW INCOME STREAM

THE FUTURE OF FUNDRAISING

CHARITY COMMISSION INQUIRY REVIEW

BARLOW ROBBINS SOLICITORS

CHARITIES REVIEW

SPRING**2018**

INTRODUCTION

Welcome to the Spring Edition of our Charities Review.

The sector has hit the national media headlines a great deal in recent weeks, with the controversy over the appointment of the new Chair of the Charity Commission and, more damaging, the scandal that has engulfed Oxfam and other overseas aid agencies over allegations of sexual misconduct and abuse. There will be an opportunity in the coming months for more measured reflection on what went wrong and how trust in the organisations concerned can be restored. The Charity Commission reports an increased number of notifications of safeguarding issues, both historic and contemporary.

Meanwhile, the vast majority of charities up and down the country are getting on with the important work they do. This issue of the Review focusses on some important day-to-day issues.

We have an interview with three fundraisers on how they see the future, an article from Shooting Star Chase about an innovative approach they have taken to generating income, some thoughts from Steve Meredith at Alliotts on cyber security and, inevitably, GDPR!

Add to that a brief legal update and a review of reports issued following recent Charity Commission inquiries – and we hope you have a stimulating and informative read.

Please do get in touch with me if we can help in any way on these, or other, issues.

Gordon Reid
Barlow Robbins
Partner & Head of Charities
+44 (0)1483 464224
gordonreid@barlowrobbins.com

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BARLOW ROBBINS
A ROUND-UP OF RECENT EVENTS

GORDON REID
Partner & Head of Charities
T: +44 (0)1483 464224
E: gordonreid@barlowrobbins.com

In the past few months the Charities Team has hosted a range of events for charity professionals and trustees.

Perhaps inevitably, all things GDPR-related have occupied a significant amount of time! In September last year we held a very well attended seminar on the subject: the number and wide range of questions the panel fielded was perhaps a testament to the fact that the sector was at last beginning to get to grips with the implication of the changes.

Our follow-up event, at the end of February, focussed much more on practical implementation, and we were joined by representatives from WWF-UK, Cherry Trees and Dulwich College, who shared their practical experience and "top tips" and willingly answered a wide range of questions, alongside our own Kenji Batchelor and Ben Collingwood. Heavy snow in Guildford did not deter the hardy – again, perhaps, evidence of a "ticking clock" and the need to get to grips with the subject!

In November we hosted a Breakfast Forum for CEOs, at our office in Guildford. Eight leaders from a wide range of organisations, including a leading child development charity, a local museum and a centuries-old civic charity, beat the early morning traffic into Guildford for a stimulating round-table discussion on leading cultural and organisational change. *Dalton Leong, CEO of *The Children's Trust, kick-started proceedings with some brief reflections on his own experience, both in business and then the charity sector. A lively conversation followed about the range of challenges CEOs face in seeking to lead their organisations forward, changing as necessary to adapt to a changing world. Proceedings finished by 9.30am – with everyone in agreement that it had been a very worthwhile session.

We organised a similar gathering in early March, this time for fundraisers. The format was very similar to the CEO Forum, but held over lunch time. *Kate Peters, from the *Community Foundation for Surrey was our guest speaker and as with previous lunches, there was enthusiastic participation from all those in attendance – who tell us that they really appreciate the opportunity to get together with their peers from other organisations, and chat honestly about challenges, frustrations and opportunities. This was our fourth Fundraisers' Forum – and there will be more!

We very much enjoy hosting these various events: we keep up to date on what is going on in the sector and, hopefully, give something back too!

If you are interested in any of the events please do get in touch with our Marketing Team – who will be pleased to add you to our mailing list.

marketing@barlowrobbins.com

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The future of FUNDRAISING

Kenji Batchelor, Associate at Barlow Robbins speaks with three professional fundraisers on their roles, challenges and opportunities for the year ahead.

The 2018 UK Civil Society Almanac found that the sector spent £6.4bn on generating funds and generated £22.2bn from individuals and £15.3bn from government. That is not a bad return and up from the figures the year before – an extra half billion spent on generating funds and two billion more in income.

Despite this, much of the fundraising commentary and mood in the sector is downbeat. We caught up with some of our friends in the industry and asked their professional fundraisers to see whether their respective crystal balls would give the sector cause for optimism in the year ahead.

Giving us their view on their roles, the challenges and opportunities in the year ahead and some top tips for your fundraising strategies are:

Nick Shenow
Project Management Team Leader, Tearfund NS

Tearfund is a Christian relief and development agency which has worked in over 50 countries. Tearfund primarily focuses on supporting those in poverty and providing disaster relief for disadvantaged communities.

info@tearfund.org
www.tearfund.org

Kerry Blackstock
Director of Public Fundraising, WWF-UK KB

WWF is the world's leading independent conservation organisation. Their mission is to "create a world where people and wildlife can thrive together".

info@wwf.org.uk
www.wwf.org.uk

Tania Cantoni
Head of Fundraising and Communications, The Meath Epilepsy Charity TC

The Meath Epilepsy Charity provides residential care and support for people with complex epilepsy and related disabilities and their families.

info@meath.org.uk
www.meath.org.uk

WHAT'S THE BEST THING ABOUT BEING IN CHARITY FUNDRAISING? AND THE WORST THING?

NS The best thing is that we are really passionate about the cause. We know that every pound raised goes to a cause that we really believe in. It is very satisfying. It is also very motivating. We can make a difference to something that we care very much about.

One of the worst things is that there are never enough resources. There is still so much more to do and there is suffering everywhere.

KB I agree. The best thing is definitely feeling like you're making a difference. Mark Astarita, ex-fundraising director of Red Cross, said "by asking people to give money, you're giving them the chance to do something amazing". I agree with that – it's a chance for individuals to make a difference to something that's important to them in the world. That feels very worthwhile and that's why I do it.

The worst? Probably the uncertainty in the sector about GDPR at the moment.

TC I agree with Nick and Kerry.

The worst thing about fundraising is definitely that you never feel like you have done enough.

WHAT DO YOU SEE AS THE BIG CHALLENGES FOR THE FUNDRAISING SECTOR IN THE COMING YEAR?

NS I think that the sector has got this common issue with GDPR and the Information Commissioner's interpretation of regulations on determining whether a supporter is giving consent or not, or whether you have a legitimate interest to keep mailing them. It's a huge issue.

KB Yes, obviously GDPR and navigating our way through that. Also in the coming year, the uncertainty over Brexit and the drop in consumer confidence levels will both be challenges for the sector.

TC Also, given the negative media the sector has received relating to fundraising practices, there is a need to prove to the general public that we practice ethical and honourable fundraising.

DO YOU SEE ANY NEW OPPORTUNITIES FOR FUNDRAISING EMERGING THAT YOU THINK CHARITIES SHOULD BE CONSIDERING?

NS So in light of the GDPR, we have an opportunity to go deeper with our supporters in the light of compliance and it will just enable us to look more carefully at who our supporters are.

KB Definitely. We are now – and again it ties in with GDPR – putting our energy into entering into a relationship with a supporter on their terms. We are looking at technology to enable that.

Because our conservation work is on quite a long horizon, we are also looking to the future by engaging with youth and school children by raising awareness. We are trying to empower them and amplify their voices.

TC Two things spring to mind:

Social media is a key tool for fundraisers today and used properly and professionally can be a great source of raising awareness and income.

Crowd funding, when done appropriately and selectively, can also be very effective although it is a relatively new tool for fundraising income generation.

WHAT ARE YOUR SUCCESS STORIES FROM 2017 THAT YOU HOPE TO BUILD ON INTO 2018?

NS We recently have been awarded match funding from DFID – The Department for International Development – by which every donation we receive is doubled. We tried really hard to win that funding because we saw that as amazing value for our supporters and our beneficiaries! So that was a huge success.

Our 'mean bean challenge' has also been very successful. It was a fast for a week where people live on rice and beans – well under 1000 calories. It's a direct representation of what our beneficiaries are experiencing. We found that people were quite spiritually effected in ▶

◀ that time as well and we don't want to be simply about receiving donations from our supporters – we want them to move on in their Christian faith and engage in poverty.

KB Our Christmas "Tiger Protector" in 2016 was our most successful film campaign ever. It seemed to provide people with an emotional connection with our work and make them feel closer to it. We want the donor – protector – to feel the difference they are making. They are our heroes! I would like to build on that and work on breathing a new lease of life into our adoption opportunities.

We were also one of the launch charities for Apple Pay and Facebook Donate. We are trying to make sure that we take every opportunity to connect with our donors.

TC The Meath celebrated 125 years of being a charity in 2017 as well as being awarded outstanding by CQC (Care Quality Commission) and we plan to celebrate another 125 years at least!

Our "125 Weekend" included everyone – patrons, trustees, supporters, residents, staff and relatives! We held a Charity Golf Day, Gala Dinner, Vintage Fair, Vintage Car Show, Residents and Relatives Afternoon Tea. The highlight was our Meath choir, Godalming Jazz Choir and others in the crowd – singing the specially written "125 song".

WHAT WOULD BE YOUR TOP TIPS FOR CHARITIES SETTING OUT THEIR FUNDRAISING STRATEGIES FOR 2018?

NS The obvious one is to sort out your compliance with GDPR.

Charities' boards and management should be visible at public events in order to better understand their supporters. In doing so they gain a love for supporters and understand how they interact with your fundraisers. It is a vital input to our business.

We have been reminded how important it is to communicate clearly and succinctly with our supporters. We are reminded that as fundraisers and communicators, our job is to make things as clear and accessible as possible.

KB One – be clear on the overall purpose, vision and mission of the organisation and what you are there to achieve.

Second – you have to invest. Fundraising income is really a factor of how much you invest in it. Be ready to take a long-term view – even though what might be best in the long-term might not show the best returns in the short-term.

"...be clear on the overall purpose, vision and mission of the organisation and what you are there to achieve."

Third – be clear on how you are measuring success and stick to your guns!

TC Be transparent – be honest about what you want money for and why and be clear to potential donors how much of their money is directly used for the beneficiaries.

Make sure that your social media and website are top notch. The first thing anyone will do when you ask them for money is look at your website and your social media.

"...Be transparent – be honest about what you want money for and why and be clear to potential donors how much of their money is directly used for the beneficiaries."

STEVE MEREDITH | +(0)1483 508513 | STEPHEN.MEREDITH@ALLIOTTS.COM | WWW.ALLIOTTS.COM

PHISHING
IS YOUR CHARITY NEXT?

All organisations have a tough challenge keeping up to date with cyber security risks, but charities are likely to suffer greater damage to their reputation if they fall victim to fraudulent activity and are less likely to have funds at their disposal to invest in methods of limiting their exposure.

By Steve Meredith
& Jonathan Graham
Alliotts Chartered Accountants

Last November The Charity Commission issued another alert, the second within a few months, focusing on highlighting ways that charities can limit exposure to cybercrime and this time the Commission was worried about the level of 'phishing' seen by charities.

Phishing is when fraudsters attempt to hoax users and get hold of sensitive information such as usernames, passwords and credit card details. The scam is normally carried out through electronic communication by email, pop-up message, phone call or text message.

Measures that can help reduce the risk of phishing include making sure that software has up-to-date virus protection and that upgrades are installed as soon as possible. 'Anti-spyware' software can be installed which helps identify **keystroke logging*.

The most common phishing attack can occur when someone clicks on a link or opens an attachment received in an unsolicited email or SMS message. In this situation fraudsters create a 'spoof' email address to make it look as if it is from a trusted source. If a recipient is unsure about the email, then it is always best to check the email header to identify the true source of communication, by hovering the mouse over the email address and the true address will be revealed as a pop up message.

It is important to make regular backups of important files to an external hard drive, memory stick or online storage provider, but once the back up is made, the backup device should be disconnected from the charity's computers, as a 'malware' infection could spread to the backup device too.

Recently the Alliotts fraud prevention team have seen an increase in 'Spear Phishing', a more targeted version of phishing where the fraudster targets a specific individual or organisation. It normally occurs after a period of social engineering (more in depth research into the individual or organisation using data gathered from social media, such as Twitter, Facebook, LinkedIn, as well Google searches) where the fraudster has gained enough information about their target to create a convincing email or letter in order to solicit money or information.

Social media is a useful tool for fundraising and increasing publicity for a cause, but charities need to be aware of what information is being posted publically about individuals connected to the organisation and ask themselves whether it is all necessary, or, whether this information should be restricted to certain users, such as registered supporters.

Unfortunately it is not difficult for charities to fall victim to these types of frauds and some have lost large sums and have had to make serious incident reports to the Charity Commission and explain to key funders what went wrong.

Alliotts have a team of certified fraud examiners who advise charities on how to prevent phishing in the first place, as well as performing fraud health checks for charities.

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THE CARE DATABASE

In this article, Tom Bradley, Director of The Care Database Company & Head of Information Services at Shooting Star Chase, shares how the charity used its own expertise to develop a database product which furthers its own charitable objects and has created an invaluable new income stream.

Shooting Star Chase
Children's Hospice Care

TOM BRADLEY | +(0)1932 823111 | HELLO@THECAREDATABASE.COM | WWW.THECAREDATABASE.COM

The Care Database

"Continuing to find new and, most importantly, sustainable fundraising streams is paramount in any charity's strategy. The Care Database is certainly a tool that provides a lasting and reliable source of income for Shooting Star Chase and I am proud of the success of the project thus far - something that I am confident can be built on as the database continues to evolve.

TOM BRADLEY
Director of The Care Database Company & Head of Information Services at Shooting Star Chase
www.thecaredatabase.com

In an ever changing climate, it's clear innovation is a vital component of any organisation; with the fundraising sector being no exception.

The Care Database, developed by Shooting Star Chase Children's Hospice, is proving to be just the innovation tool to help provide a sustainable income stream for our charity, particularly given our reliance on supporters' generosity to help raise the £10 million a year needed to provide the vital care and support for children with life-limiting conditions.

The Care Database Company was founded in early 2017, having previously operated within the parent company, Shooting Star Chase for over 15 years. Originally, the charity decided to develop a database that enabled provision of safer care to service users and aid the care team in their roles. It began life as an access based database and handled patient demographics.

Over the years, and as it developed, more and more hospices took on the system and The Care Database became the market leader in the children's hospice sector.

In 2014, it became clear that further development of the database in its original format wasn't going to be feasible, and even though the database was still fully functional, the rapid expansion and number of concurrent users meant a new platform had to be designed.

Three years on, The Care Database continues to go from strength to strength. The new database now includes features such as remote access for tablets so nurses and carers can use notes and care plans when working alongside patients, staff rostering which links to patient dependencies and a comprehensive reporting suite. Being web based means health care professionals, such as GPs, can also log in remotely to the system to look at the care plans and patient notes. Later in the year, parents and family members will also be able to access the system themselves to send booking requests online, sign off care plans and see availability at the hospices.

In the past year, the company has secured five additional contracts from other children's hospices, with another seven interested parties either in tender or product demonstration phases. The annual subscription fees from selling the software means The Care Database Company is delivering a regular and reliable income stream for the charity whilst providing immense benefits and efficiency for care teams at children's hospices across the country.

Shooting Star Chase is a leading children's hospice charity caring for babies, children and young people with life-limiting conditions, and their families. To find out more and see how you can support them visit:
www.shootingstarchase.org.uk

THE CHANGING FACE OF LEGACY GIVING: CHALLENGES AND OPPORTUNITIES

Legacy income represents approximately 14% of all fundraised income received by UK charities and is predicted to exceed the £3 billion mark for the sector by 2021.

SCOTT TAYLOR | +(0)1483 464274 | SCOTTTAYLOR@BARLOWROBBINS.COM | WWW.BARLOWROBBINS.COM

Historically, the growth of legacy income is largely attributed to a strong economy and increased awareness of legacy giving. However, the socio-economic landscape in the UK continues to change and provide as many challenges as the opportunities for the sector. As the composition of family and household structures change over time, so do patterns of wealth, longevity and cultural diversity which inevitably influence the value and likelihood of charitable giving.

The following paragraphs consider some of opportunities and challenges the legacy sector is currently facing.

BUILDING RELATIONSHIPS

Research has indicated that whilst as much as 60% of the population give to charity in some form every month, less than 10% of deaths result in a legacies passing to charity. This raises the question as to whether those who make charitable donations in their daily lives link this with the potential for legacy giving. It therefore seems that there is an opportunity to further develop relationships with regular donors and to try to inspire them to value their capacity to make a charitable bequest in their will as much as their capacity to make regular donations during their lifetime. In terms of attempting to appeal to new donors, research has indicated that legacies generally derive from a small population living in the most affluent areas of the UK with the over 65s holding 20 per cent of the total wealth. With this in mind, it could be well worth seeking to connect with current and future donors who hold smaller estates whether located in wealthy or less wealthy areas as part of any fundraising and legacy campaign. This will of course need to be given careful thought so that charities are sure to understand and cater for the needs of their supporters.

"Research has indicated that whilst as much as 60% of the population give to charity in some form every month, less than 10% of deaths result in a legacies passing to charity."

BREXIT AND THE ECONOMY

Brexit as well as other political events continue to help create economic uncertainty and will inevitably impact the decisions potential donors are having to make in relation to legacy giving.

Uncertainty surrounding economic growth and house prices have seen an increased tendency for inheritances to be passed to family members during lifetime. The knock-on effect of this may result in lower value and/or a reduced number of legacies passing to charity.

The sooner we have certainty surrounding Brexit the sooner UK charities are likely to benefit from greater confidence in the economy.

GENERAL DATA PROTECTION REGULATIONS

The new General Data Protection Regulations or GDPR for short comes into force on 25th May 2018 and will impact the way charities communicate with their supporters to ensure legal compliance.

In relation to legacy fundraising, this could mean that traditional methods of post or electronic marketing in part make way for more personal methods of communication. This could include face-to-face and community type strategies to help raise legacy awareness and for supporters to consider leaving a gift in their will. It may be that GDPR, which on the face of it, creates an undeniable challenge for many charities, may also represent an opportunity for charities to engage on a more personal level with supporters when it comes to fundraising.

At Barlow Robbins we have a specialist team who advise charities on legacy administration and the resolution of legacy disputes. If you have a legacy concern you would like to discuss then please feel free to contact Scott Taylor on:

T: +44 (0)1483 464274
E: scotttaylor@barlowrobbins.com

TOP FACTS ABOUT THE **VOLUNTARY SECTOR**

SOURCE VIA NVCOs UK Civil Society Almanac 2017/18

166k
VOLUNTARY **ORGANISATIONS**

There are about **166,000** voluntary organisations in the UK

85%
MADE UP OF SMALL **ORGANISATIONS**

The majority of organisations are small

THE NUMBER OF **VERY LARGE CHARITIES IS INCREASING**

42 CHARITIES NOW HAVE **AN INCOME OVER £100m**

1/3
OF THE SECTOR'S INCOME COMES **FROM GOVERNMENT**

Third of sector's income comes from government — **£15.3bn, £7.3bn** Central and **£7.1bn** local

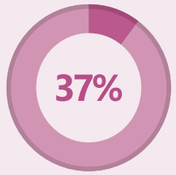
3% OF CHARITIES ACCOUNT FOR **80% OF THE SECTOR'S TOTAL INCOME**

Organisations with an income of 1 million or more account for **80%** of the sector's total income...

...yet make up only **3%** of the total number of charities

VOLUNTARY **WORKFORCE**

853,000 people were employed in the voluntary sector in the UK in June 2016. This figure represents an overall increase of nearly **27,000** since June 2015. Over the period June 2014 to June 2015 the increase was significantly smaller **(+13,000)**



37% VOLUNTARY SECTOR **INCREASE SINCE 2004**

Overall the voluntary sector workforce increased by over **230,000 (37%)** since 2004

TOP FACTS ABOUT THE **VOLUNTARY SECTOR**

SOURCE VIA NVCOs UK Civil Society Almanac 2017/18

65%
OF VOLUNTARY SECTOR **EMPLOYEES ARE WOMEN**

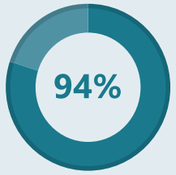
Women make up about two-thirds of the workforce in the voluntary and public sectors **(65% and 66% respectively)** but only **40%** of the private sector workforce

9%
OF VOLUNTARY SECTOR ARE FROM **FROM MINORITY ETHNIC GROUPS**

Fewer than one in ten **(9%)** voluntary sector employees are from minority ethnic groups, a lower proportion than in the public **(11%)** and private sectors **(12%)**

THE ANNUAL INCOME **OF VOLUNTARY ORGANISATIONS**

Voluntary organisations make up the largest part of civil society in financial terms, accounting for the largest share of income with **£45.5bn**

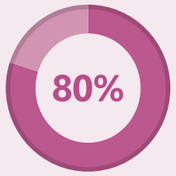


94%
AVERAGE INCOME **SPENT BY CIVIL SOCIETY ORGANISATIONS**

On average, civil society organisations spend **94%** of their income

LONDON **WORKFORCE**

London contains the highest percentage for any region of larger voluntary organisations, with **7%** of its charities having an annual income of more than **£1m** compared to **2-3%** for other regions



80%
OF ALL UK CHARITIES **ARE BASED IN ENGLAND**

England has the highest number of charities for any of the four home nations **(133,380)**, representing **80%** of all UK charities

CHARITY COMMISSION INQUIRY REVIEW

Helen Harvie reviews a selection of recent Charity Commission inquiry Reports from the last few months and draws together some relevant themes for the sector:

HELEN HARVIE
Consultant – Schools & Charities
T: +44 (0)1483 464219
E: helenharvie@barlowrobbins.com

OFFICIAL WARNINGS

The Commission's power to issue official warnings to charities was introduced with the Charities (Protection and Social Investment) Act 2016. This new power was expressed as giving the Commission a tool to deal with regulatory concerns about a charity without taking the significant step of exercising its more heavy-handed powers to take regulatory action, such as opening an inquiry or removing trustees.

An inquiry report into Islamic Trust (Maidenhead) was published on 9th February 2018 which highlighted the charity's poor record-keeping, deficient independent examination, failure to notify the Commission of changes to their governing document, out-of-date signatories on the bank account and failure to comply with legal requirements in relation to fundraising.

An official warning was given to the charity on 8th December 2017, relating particularly to its failure to submit annual accounts for a period of four years. The Commission concluded that it was only the direct intervention of the Commission that brought that situation up-to-date.

It is worth being aware that warnings are issued to the charity trustees but are also publicised alongside the charity's entry on the Commission's register, and this could clearly affect future funding. The decision to issue a warning cannot be appealed to the Charity Tribunal but the Commission do allow the trustees time in which to make their case before the warning is published. This was not taken up by Islamic Trust. It is always advisable to engage with the Commission as this may result in less punitive action being taken.

TRUSTEE DISQUALIFICATION

In the case of both Deen Team (published 21st December 2017) and Peacetrail (published 29th January 2018) an inquiry resulted in the disqualification of a trustee (for periods of 4 years and 4.5 years respectively) and the ultimate winding up of the charities.

Trustees can be automatically disqualified for certain reasons (including capacity, insolvency and disqualification as a company director). However, the Charity Commission also has the ability to disqualify trustees based upon their conduct whilst acting as trustee. It is a criminal offence to continue to act as a trustee whilst disqualified, resulting in a maximum prison sentence of 2 years. It is possible to apply to the Charity Commission for a waiver of the disqualification.

From 1st August 2018, the reasons for automatic disqualification will be extended to include those on the sex offenders register and those with certain unspent convictions. The scope of disqualification will also be extended so that it applies not just to trustee roles but also to senior management roles, particularly the CEO and the CFO. Trustees need to remember to add these new restrictions into the recruitment and post appointment declarations that new trustees, CEOs and FDs are asked to complete.

INTERNATIONAL CHARITIES AND SAFEGUARDING

The recent Oxfam allegations of sexual exploitation in Haiti have undoubtedly damaged the sector's reputation. However, this issue was evident in earlier inquiries. In Manchester New Moston Congregation of Jehovah's Witnesses (published 26th July 2017) there was an example of a trustee board failing to take seriously allegations of child sexual abuse against one of its trustees. The report states that the trustees did not co-operate openly and transparently with the Commission and concluded that this represented misconduct and mismanagement in the administration of the charity. It stressed that any such incident should be taken seriously and should be reported immediately to the Commission under its serious incident reporting regime.

"Trustees can be automatically disqualified for certain reasons (including capacity, insolvency and disqualification as a company director)."

In the Grail Trust (published 28th March 2017) there were similar issues but in relation to an international charity supporting disadvantaged children in India. The Commission became aware of an allegation of child abuse involving someone connected to the charity and then concluded that there were serious governance failures with a lack of proper oversight of safeguarding and the trustees' failure to identify and report this allegation to the Commission as a serious incident.

The Oxfam allegations have brought the whole matter to the public's attention. Not only has the Oxfam CEO been brought before the Commons International Development Committee, but the Commission has now opened a statutory inquiry into Oxfam. Oxfam itself has announced a comprehensive action plan to stamp out abuse but it remains to be seen whether this will be sufficient to limit the damage to its reputation, and indeed its donor base. Other major international charities, such as Save the Children, Red Cross and Plan International, have now admitted that they are dealing with similar issues.

The Commission has convened a summit on safeguarding, to include DfID (Department for International Development) and various charities and umbrella bodies working internationally. It will also establish a taskforce to deal with the increased volume of safeguarding serious incident reports, which have escalated since the Oxfam story broke. It has recently updated its safeguarding strategy and proposes to bring in additional safeguarding expertise to assist in communicating its requirements to the charity sector.

In conclusion, it is always worthwhile checking the published results of Charity Commission inquiries. Not only are they a good source of lessons for charity trustees, but they often give indications of the future priorities of the Charity Commission as regulator.

KENJI BATCHELOR | +(0)1483 464248 | KENJIBATCHELOR@BARLOWROBBINS.COM | WWW.BARLOWROBBINS.COM

EVOLUTION, NOT REVOLUTION

AN UPDATE ON THE GENERAL DATA PROTECTION REGULATION

"Evolution, not revolution" is the mantra that the Information Commissioner's Office ("ICO") has been chanting for some time now as their euphemistic summary of the change the General Data Protection Regulation ("GDPR") will bring about.

In pure legal terms there is some truth in this but for many of our schools and charity clients it is, however, small consolation for the overhaul of documents, policies and culture they are having to consider.

We have been assisting schools and charities on their data protection evolutions including data audits, risk assessments, data protection officers, privacy notices, legal bases for processing and all manner of weird and wonderful issues. Since our GDPR seminars last September and this February we have also been delivering bespoke GDPR training to boards, senior leadership teams and governors as well as the Boarding School Association's nationwide 'Roadshow'.

It is not just organisations which are evolving, the ICO itself has been updating its materials, guidance and thoughts on GDPR compliance and implementation and we summarise below the key updates:

1 WHAT ABOUT PROCESSING CHILDREN'S DATA?

The ICO's consultation on their new draft guidance **"Children and the GDPR"* closed on 28th February. The guidance is the ICO's view on what Recital 38 of GDPR – that "children require special protection" – looks like in practice.

All charities and schools who work with children should read this guidance and keep an eye out for the final version.

The following sections are essential reading:

- privacy notices
- organisations seeking to process data relying on parental consent
- situations where organisations wish to rely on the processing being necessary for the performance of a contract

2 WHAT DOES 'LEGITIMATE INTERESTS' MEAN?

Much of the excitement and panic surrounding reliance on consent for processing people's data has, it seems, been replaced by a tentative optimism that perhaps 'legitimate interests' ("LI") is the answer to all the sector's data protection woes.

The **ICO published its LI guidance* at the end of March, which says that whilst LI "is the most flexible lawful basis for processing… you cannot assume it will always be the most appropriate."

The guidance also confirms that organisations must carry out a legitimate interests assessment – a light-touch risk assessment – in order to be able to demonstrate that the processing is lawful and that you have considered all the relevant factors. The guidance attaches a sample **LIA template* which can be accessed following the link.

3 HOW TRANSPARENT IS TRANSPARENT?

Transparency, under GDPR, is a fundamental aspect of the First Principle of data protection – that personal data be processed lawfully, fairly and transparently. Transparent processing is also intrinsic to 'fair' processing (as required under the First Principle) and the new 'accountability' principle of GDPR. But how transparent do you have to be to be transparent?

The EU Article 29 Working Party – which is an advisory body made up of representatives from the data protection authorities of each EU member state – have published guidelines on the transparency principle of GDPR. The guidelines are not binding, but in the context of the ICO's silence on this principle, it constitutes the best barometer of how the ICO might regulate on issues surrounding transparency.

The 'evolution' to ensure transparency of data processing for schools and charities will involve changing how they communicate ▸

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with data subjects – be they beneficiaries, pupils, parents, users, alumni, donors, staff or volunteers. Changes may need to be made to privacy notices, how individuals' rights are communicated, when there is a change in the purposes for processing and when breaches occur.

The onus is on the data controller to adopt a "user-centric" approach which makes information easily accessible and avoids drowning data subjects in long legalistic policies – or "information fatigue" as described in the guidelines. This ethical approach to data protection compliance will be a significant culture shift for many organisations.

4 WHAT RECORDS OF PROCESSING DO WE NEED TO KEEP?

The ICO published further **guidance* on its website in January 2018 on what documentation organisations need to keep recording their processing activities.

The guidance includes templates on keeping adequate records – for both controllers and processors – and tips on how these records could be populated and put together.

Whist there is a lighter burden on organisations employing 250 or fewer people, the guidance says "even if you need not document some or all of your processing activities, we think it is still good practice to do so."

Failure to keep adequate records is a breach of the GDPR but is one of the more straightforward requirements of the regulation which schools and charities – already operating in highly regulated environments – should not find too onerous.

5 DATA PROTECTION OFFICERS – DO YOU NEED ONE?

This is has been a question many of our independent school clients have been wrestling with. State sector schools will have to do so as they are 'public authority' under GDPR. So does your independent school or charity need to appoint a GDPR Data Protection Officer ("DPO") and, if not, is there any virtue in appointing one anyway? With new DPO vacancies being advertised with salaries starting from £30k and anywhere up to £100k+ this is a question which will have serious cost as well as compliance implications.

The simple answer is that we are all waiting for some clearer guidance from the ICO, although they beefed up their website material on DPOs in March. The Article 29 Working Party has published **guidelines on DPOs*, but the issue of whether schools or charities should appoint a DPO will come down to the judgment of each organisation. Do your "core activities" consist of large scale, regular and systematic processing of personal data? Do your "core activities" consist of large scale processing of special categories of data (relating to health, sex life, religion, etc.)? Whatever your interpretation of your situation, the Article 29 Working Party and ICO guidance suggest, sensibly, that the issue should at least be considered and the decision properly documented.

6 OTHER NEW (AND SOME LESS RECENT) GUIDANCE

The EU Article 29 Working Party has also published guidance on:

- transparency
- reporting personal data breaches
- **consent*
- **conducting Data Protection Impact Assessments*
- **automated individual decision-making and profiling*
- **data portability*

The ICO have also published guidance on:

- consent
- **GDPR – the ICO's general online guidance document*
- **Preparing for GDPR – "12 steps to take now"*
- **"Getting ready for GDPR" checklists for controllers and processors*
- the right to be informed (Privacy Notices)
- conducting Data Protection Impact Assessments

KENJI BATCHELOR
Associate – Schools & Charities
T: +44 (0)1483 464248
E: kenjibatchelor@barlowrobbins.com

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BARLOW ROBBINS & SHOOTING STAR CHASE

BEKKI PRITCHARD
Solicitor, Commercial Property
T: +44 (0)1483 464232
E: bekkipritchard@barlowrobbins.com

Barlow Robbins are proud to be a Corporate Partner of Shooting Star Chase, a leading children's hospice charity caring for babies, children and young people with life-limiting conditions and their families.

We have worked closely with Shooting Star Chase to develop a fund-raising plan which has allowed everyone at the firm an opportunity to play their part in raising money for the charity. Fund-raising initiatives have varied from sporting challenges outside the office to collection boxes and competitions within the office and below are some highlights from the past year of which we are particularly proud:

Berlin Marathon – In September last year, Gordon Reid, Charities Partner at Barlow Robbins, ran the Berlin Marathon in 4 hours and 15 minutes raising an amazing **£3,356.20.**

Christmas Jumper Day – Each year the firm holds a 'Christmas Jumper Day' in each of the offices where staff make a £1 donation in order to wear their festive clothing to the office with the prize for the best jumper being awarded in each office – a highly sought after title!

Name the Bear – At the Surrey Game and Country Fair held at Loseley Park, we held a 'Name the Bear' competition in aid of Shooting Star Chase. The competition was extremely popular and entrants spanned all the ages. After a variety of names being offered, and a great deal of excitement from the children in attendance, the winner was crowned and the bear duly named Vincent.

Since June 2016 when our Corporate Partnership began we have raised over **£30,000** for Shooting Star Chase and we continue to strive to find new and exciting initiatives that the firm can get involved in in order to continue to support the charity.

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NEWS IN BRIEF
LEGAL UPDATE

Sam Ho & **Kenji Batchelor**

NEW SECRETARY OF STATE FOR DCMS AND CIVIL SOCIETY STRATEGY

As part of Theresa May's cabinet reshuffle, Matt Hancock MP was appointed as the new Secretary of State for Digital, Culture, Media and Sport on 8th January 2018; replacing Karen Bradley. Hancock was previously Minister of State for Digital and is the MP for West Suffolk.

Following his appointment, Hancock became the first MP to launch his own smartphone app which he says allows him to promptly respond to issues that the community is most engaged with.

Tracey Crouch, the Minister for Civil Society, is currently consulting on the government's new civil society strategy aimed at improving how the government, public bodies and charity sector interact. You can have your say on the gov.uk website (*view).

CHARITY COMMISSION ISSUED ITS FIRST OFFICIAL WARNING

The Commission issued its first official warning under its new powers, which came into effect on 1st November 2016.

National Hereditary Breast Cancer Helpline received the warning (*view) on 3rd July 2017. The Commission was concerned that the trustees had "committed a breach of trust or duty or misconduct or mismanagement in the administration of the charity". The Commission's warning followed the trustees' failure to comply with an Action Plan the Commission had issued them with under s15 Charity Act 2011.

A failure by the trustees to comply with the warning could trigger a formal inquiry which would then enable to Commission to employ its full range of statutory powers. The full report demonstrates how the Commission may use its new warning powers as an intermediate measure to intervene in cases of breach of trust, misconduct or mismanagement.

DONATIONS FROM THE PRESIDENT'S CLUB

Following the recent President's Club dinner debacle, several charities have announced that they will return millions of pounds worth of donations raised by the dinner. The Royal Academy of Music has already made a formal request to the Commission to return donations.

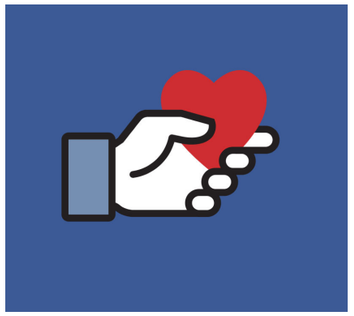
A recent survey found that two-thirds of people thought that charities should keep their donations and one in five people believed the money should be returned – the remaining 13% were unsure.

Although charities are under no obligation to return the donation, there are many considerations the trustees need to consider when deciding what to do: do they feel morally bound to return the donations? Would the charity suffer any financial difficulty by returning the funds? Is there a risk of damage to reputation in keeping the donations?. Ultimately, trustees must act in the best interest of their charity. The Charity Commission "Know your Donor" guidance (*view) will be helpful to charities considering this issue and the Commission has also offered to provide specific advice (*view) to charities on the matter, if required.

NEW CHARITY COMMISSION CEO SEEKS TO OFFER TRUSTEES MORE ADVICE

The recently appointed chief executive of the Charity Commission, Helen Stephenson, has said that she would like the Commission to refocus on giving charity trustees advice with the possibility of larger charities funding such service.

In a recent interview with Governance & Leadership magazine, Stephenson expressed how the Commission needs more financial resources in order to deliver what trustees need from them. With continued budget cuts over recent years, the Commission's focus has been drawn towards a regulatory and investigatory role, whilst the advisory side has suffered.
Watch this space!



FACEBOOK DONATE GOES LIVE IN THE UK

Facebook Donate is now available to users in the UK and some European countries after being a great success in the US. The facility has been used in the US since 2015 and according to Facebook it helped raise more than $10m for people affected by Hurricane Harvey.

The social media giant has introduced the free tool that allows UK members to donate directly to selected charities. Before now, if members wanted to donate money from a Facebook page – they had to visit third party sites to complete the transaction.

STOWELL APPOINTED AS NEW CHAIR OF THE CHARITY COMMISSION

The government recently appointed Baroness Stowelll as the new Chair of the Charity Commission (*view). Stowell replaces William Shawcross, who ended his tenure on 23rd February. Prior to Stowell's appointment, the Select Committee on the Department for Digital, Culture, Media and Sport (DCMS) decided not to support the appointment as they were concerned that she did not have enough experience working with charities and had no "real insight, knowledge or vision" for the sector. Matt Hancock, who has the final say, has pushed through the appointment in spite of the opposition.

OXFAM

The Charity Commission opened an inquiry on 12th February to review the recent allegations of misconduct by Oxfam's staff during its humanitarian response in Haiti in 2011 (*view).

The Commission is concerned that Oxfam may not have fully and properly disclosed material details at the time of the allegations, it's handling of the incidents since and the impact it has had on public trust and confidence.

According to the Commission's press release, the purpose of the statutory inquiry is to:

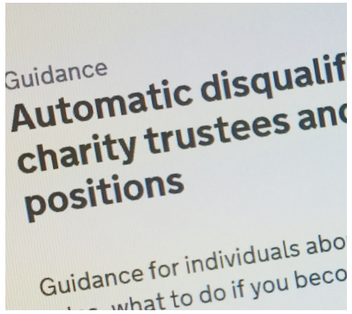
1. examine the charity's governance and management of its safeguarding policies and practices, in relation to the applicable law, good practice and its obligations as a charity, more particularly concerning:

- its response, general handling and disclosure of serious safeguarding incidents;
- its obligation to provide a safe environment for beneficiaries, staff and charity workers;
- the recruitment and supervision of volunteers, charity workers and employees; and
- maintaining its reputation as a major aid charity.

2. scrutinise and review how it implemented the Commission's 2017 action plan requirements and ensure that any other relevant actions are undertaken.

Following conclusion of the inquiry, the Commission will publish a report detailing its findings.

Several other high profile charities have been in the headlines since the saga first hit the headlines and many organisations are taking the opportunity to review their safeguarding policies and procedures.



THE COMMISSION'S NEW AUTOMATIC DISQUALIFICATION POWERS

The government has published updated guidance setting out how the new automatic disqualification rules (which come into effect from 1st August 2018) will restrict who can run charities and how disqualified individuals can apply for waivers in limited circumstances (*view). The changes are part of the phased implementation of the Charities (Protection and Social Investment) Act 2016.

The key changes to the automatic disqualification rules are that:

- the legal reasons that disqualify someone acting as a trustee now include being on the sex offenders list and certain unspent convictions; and
- people disqualified from acting as a trustee will also be disqualified from senior management positions within charities, such as Chief Executive and Chief Finance Officer positions (or equivalent).

Since 1st February 2018, people who will become automatically disqualified under the new rules can apply to the Charity Commission for a waiver. The Commission has stated it will give waivers where it is in the best interests of the charity and it is not likely to damage public trust and confidence.

If someone makes an application for a waiver between 1st February and 1st August, their disqualification under the new rules will not take effect until the Commission has reached a decision and any appeal has been decided.

Charities should be preparing by:

1. ensuring their pre-appointment checks are sufficient;
2. reviewing employment contracts and checking that their current team will not be affected by the new automatic disqualification; and
3. arranging for their trustees and senior managers to sign declarations to confirm they can still act.

The charity Unlock has published detailed guidance for individuals and charities on the waiver process in relation to criminal records (*view). This will be essential reading for charities who for example, work to rehabilitate ex-offenders, as they may wish to have ex-offenders on their board and in their management because they might be best qualified to do the work.

The government is expected to make further additions to the guidance once the new disqualification rules are implemented.

Kenji Batchelor
Barlow Robbins
Associate – Schools & Charities
+44 (0)1483 464248
kenjibatchelor@barlowrobbins.com

CONTACT US

Do get in touch if you wish to discuss any of the topics outlined in this edition of the Charities Review. Alternatively view our website for further information regarding our services.

To contact us: info@barlowrobbins.com | +44 (0)1483 543210 | www.barlowrobbins.com | @BR_Charity_Law | barlow-robbins

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SOLICITORS

GUILDFORD
The Oriel
Sydenham Road
Guildford, Surrey GU1 3SR

T: +44 (0)**1483 543210**
E: info@barlowrobbins.com

WOKING
Concord House
165 Church Street East
Woking, Surrey GU21 6HJ

T: +44 (0)**1483 748500**
E: woking@barlowrobbins.com

LONDON
5th Floor
20 North Audley Street
London, W1K 6WE

T: +44 (0)**207 0780810**
E: london@barlowrobbins.com