

Coronavirus (Covid-19) Help sheet:

31 March 2020

Finances and funding - a brief guide for charity trustees during these uncertain times

Unsurprisingly, like the rest of society, charities have been hit hard by the impact of the Coronavirus and the steps the Government has taken to mitigate its spread. Some charities are dealing with a massive surge in demand for their services whilst at the same time grappling with a severe drop in income and an uncertain financial future. Others have had to “shut up shop” with all or a significant portion of their income disappearing overnight.

This note...

This note provides some legal and governance pointers and sets out a detailed analysis of what Government help is currently available to charities, as well as signposting some other possible avenues of financial support and assistance for charities in these unprecedented times.

However, even though we are in uncharted waters it will be important for trustees to be able to demonstrate (for example, to the Charity Commission) that they have complied with their legal duties and responsibilities whatever course of action they take (or do not take). In this context, the key duties and responsibilities are (1) to act in the best interests of your charity; (2) manage your charity’s resources responsibly (which includes acting prudently and protecting and safeguarding the assets of your charity); and (3) to act with reasonable skill and care. Please also see the section on page 2 below regarding the Charity Commission’s published regulatory approach during this crisis.

This note is by no means exhaustive. I will be providing further advice and guidance as the weeks go by. However, if you have any questions or you would like any further information please do not hesitate to contact me.

What help is available from the Government?

Despite lobbying from charities, numerous sector bodies and over 100 MPs the Government has not yet introduced a financial support package specifically for charities. There have been some rumblings in the media that help may be forthcoming but as yet nothing is clear. However, charities and/or their trading subsidiaries may be able to benefit from some of the measures that the Government has announced for businesses generally. These are explored at the

appendix to this note, but it will be important to look at the eligibility criteria carefully. In brief, however, these measures are:-

- **Coronavirus job retention scheme:** support to employers by paying 80% of the salaries of employees who have been asked to stop working but who are being kept on the payroll (“furloughed employees”), subject to a monthly cap of £2,500. This Scheme is already being utilised by charities- note that Oxfam has announced that it will furlough approximately two thirds of its employees, including most shop staff, and Barnardo’s has announced that it will be furloughing 3,000 of its employees.
- **Deferral of VAT payments**
- **Support regarding payment of statutory sick pay**
- **Business rates holiday for retail, hospitality and leisure sectors**
- **Specific support for nurseries and pre-schools**
- **Protection from eviction**
- **Business interruption loan scheme**

Charity Commission Coronavirus guidance

In its Coronavirus guidance it is some comfort that the Charity Commission states that it wants *“to assure charities that its approach to regulation during this uncertain period is as flexible and pragmatic as possible in the public interest, whilst helping trustees to be aware of and think about the wider or longer impact on their charity.”*

The guidance sets out the Commission’s responses to the most asked questions that it has received to date regarding the running of charities during this pandemic. This note refers only to the Commission’s responses to the use of reserves and restricted funds and the need to hold meetings remotely during this period of isolation.

Can I use reserves and restricted funds to help my charity through the crisis?

The Commission’s salient points in response to the above question are:-

- **Review and assess short, medium and long-term commitments**
- **Identify which, if any, can be stopped or delayed**
- **Reserves can be spent**

However, reserves should not be run down to nil without a longer term plan and it will be important to look at the overall financial picture of your charity. (Please also see the section on pages 4 and 5 below headed “Suspension of the wrongful trading regime for companies and charitable incorporated organisations (CIOs) and personal liability”).

- Identify which of your funds or assets have restrictions on their use

These include restricted funds (that can only be applied for specific purposes of the charity) or permanent endowment assets (where only the income and not the capital can be expended).

Note that sometimes funds are called restricted funds whereas in fact they are designated funds which, unlike restricted funds, can be “undesigned”.

Also note that the law allows in certain circumstances (a) restricted funds to be “re-allocated” and applied for, say, the general charitable purposes of the charity and (b) for permanent endowment assets to be spent. However, the Charity Commission advises that accessing such funds or assets should only be considered if other options, such as reserves, are not possible and specialist advice should be obtained.

- All decisions on such financial matters should normally be taken collectively and significant decisions and action points noted in writing.

The Commission refers trustees to its various financial guidance including its guidance CC12 entitled *Managing a charity’s finances, planning, managing difficulties and insolvency* (link below). I would urge trustees to read this guidance and carefully note/minute any action points accordingly. (However, again, please see the section on pages 4 and 5 below headed “Suspension of the wrongful trading regime for companies and charitable incorporated organisations (CIOs) and personal liability”).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735467/CC12.pdf

Can I use video, teleconferencing and the internet in place of face to face meetings?

Of course, in order to comply with the Government’s social distancing strategy, currently face to face trustee meetings are not an option. Even if your charity’s governing document does not include provisions allowing you to hold meetings by way of telephone conference facility or by virtual technology, the Commission has confirmed that it will understand if you go ahead and hold meetings in this way. However, you should record why your meeting has been so held and the meeting should, as for all meetings, be accurately and carefully minuted.

Alternatively, decisions may also be made by written resolution (which will require unanimity). However, if the matter to be decided is complex or involves important decisions regarding, say, the solvency or the future of your charity then decision making via a written resolution without any prior discussions between the trustees may not be appropriate.

Updated Coronavirus guidance

The Coronavirus guidance will be updated by the Commission on a regular basis. It was last updated on 31 March (see the link below).

<https://www.gov.uk/government/news/coronavirus-covid-19-guidance-for-the-charity-sector>

To ensure that you receive the latest guidance as and when it is updated, you may wish to sign up to receive the Commission's blog (again link below).

<https://charitycommission.blog.gov.uk/subscribe/>

Suspension of the wrongful trading regime for companies and charitable incorporated organisations (CIOs) and personal liability

Charitable companies, CIOs and subsidiary trading companies all have their own legal personality which means that they enter into contracts in their corporate name. The consequence of this is that the directors/trustees of such entities have limited liability. This means that they will not, subject to certain exceptions such as where there has been wrongful trading, be personally liable for the debts of their charity/trading subsidiary even if there are insufficient funds to honour such debts.

Wrongful trading

A wrongful trading situation will arise where a company/CIO continues trading when the respective directors/trustees knew or ought to have known that there was no reasonable prospect of avoiding insolvent liquidation.

A company/CIO will be regarded as insolvent if either its debts cannot be paid as they fall due or if its liabilities exceed its assets.

If wrongful trading is proved by the court the directors/trustees can be found personally liable.

Suspension of the wrongful trading regime for companies and CIOs

On 28 March the Government announced that it would be relaxing the insolvency regime by temporarily suspending the wrongful trading provisions. This suspension will apply retrospectively from 1 March this year and will last until at least the end of May.

Suspending the wrongful trading rules should give directors/trustees some reassurance and confidence to assess the needs of and future viability of their charity/trading subsidiary without the threat of incurring personal liability.

However, it is important to note that the suspension does not relieve directors/trustees of their fiduciary duties and responsibilities under company law and charity law. In addition, as one would expect, fraudulent trading (the carrying on of operations with the purpose of deceiving or defrauding creditors) remains a criminal offence.

What is the position regarding unincorporated charities?

Please note, however, that the position remains unchanged for charities that are not constituted as a company or a CIO – eg charitable trusts and unincorporated associations (generally referred to as unincorporated charities).

Particular care needs to be taken by trustees of unincorporated charities as these charities do not have their own legal personality. Consequently, the trustees in their personal capacity, rather than the charity, enter into contracts with third parties, can sue and be sued and are responsible for the debts of their charity.

Trustees who have incurred personal liability arising from the debts of their charity or any litigious matters involving their charity are entitled to be indemnified from the assets of the charity if they have acted honestly and reasonably. However, this right of indemnity will be worthless where any such liability incurred exceeds the assets of the charity.

If the trustees have purchased trustee indemnity insurance, this is designed to cover any such shortfall. However, in practice, trustee indemnity insurance is often little more than a “comfort blanket” for trustees because (a) there are legal limitations on what the insurance can cover and (b) charities have found it difficult to prove to insurance companies that they have a legitimate claim.

Check your contractual obligations

You should review all current contractual obligations. These might, for example, be in relation to the supply of goods and services regarding the day to day activities of your charity and/or in relation to fundraising events.

Will the Coronavirus outbreak relieve a party from its contractual obligations?

Whether or not your charity, its trading subsidiary (or the third party) will be excused from the respective obligations under a contract will depend on the specific wording of the contract. For example, most commercial contracts will include what is known as a “force majeure” clause. Such a clause is intended to relieve the relevant contracting party from liability if a specified event occurs which is beyond the control of the party in question (eg acts of war, terrorism, earthquakes, hurricanes, acts of government etc).

The wording of force majeure clauses varies from contract to contract. If your force majeure clause refers to an epidemic or pandemic then it will cover Covid-19. If a clause does not include reference to an epidemic or pandemic then it is less clear whether you will be able to rely on the “act of government” provision as to date the Government has made recommendations regarding the closure of venues and facilities and the cancellation of events rather than making orders using legal powers.

Communicate and negotiate

Having said all that, irrespective of whether in contractual terms a force majeure event has occurred, in my experience of the crisis to date, many third parties will help charities if they can. For example, they may agree to cancel a contract thus relieving the charity from its payment obligations or you may be able to negotiate an amendment to the contract in your favour. Early communication here will be key.

Check your insurance policies

You should review any insurance policies that you have in place and notify your insurers (or your brokers) of any changes in your circumstances.

If you want to make a claim on a policy (for example, if you have in place a trustee indemnity policy (see page 5 above) or an event cancellation policy (or perhaps less common a business interruption policy)), you will need to check the policy's terms and conditions and contact your insurers or brokers accordingly.

Whether or not you can claim on your policy may depend on whether it covers government ordered closures as a result of a pandemic or an unspecified notifiable disease.

Check what support is available from your bank

Do keep your banks (and any mortgage provider) informed and enquire as to what support packages they have in place. These will vary from institution to institution but they might include all or some of the following:-

- [Loan repayment holidays](#)
- [Interest rate reductions](#)
- [Temporary emergency loans with no fees](#)
- [Immediate access to deposit balances with no penalty](#)
- [No arrangement fees for new overdrafts or overdraft limit increases](#)
- [No arrangement fees for new or increased finance facilities.](#)

Alternative sources of funding

The charity sector and others have rallied and numerous emergency funds have been launched to help charities weather this storm. The publication, Civil Society News, has put together a list of emergency funds currently available which is updated regularly ([link below](#)). The eligibility criteria from one fund to the next will vary significantly and it will of course be important to review the criteria and terms and conditions of grant/loans carefully.

<https://www.civilsociety.co.uk/voices/what-funding-is-available-to-charities-during-covid-19-pandemic.html>

Fundraising during this crisis

Guidance from the Fundraising Regulator

Please see the Fundraising Regulator's specific guidance on fundraising during this crisis ([link below](#)).

As well as advising on what types of fundraising would and would not be appropriate, the guidance covers the implications of cancelled fundraising events including the position regarding the return of donations.

<https://www.fundraisingregulator.org.uk/more-from-us/news/coronavirus-covid-19-advice-fundraising>

Trading subsidiaries

Many charities route their fundraising activities via a trading subsidiary – eg charity shops and the like. Do remember that the relationship between a charity and its trading subsidiary must be at arms' length. This means that a charity cannot prop up its struggling subsidiary (eg by way of a loan or investment) without the trustees being satisfied that this would be in the best interests of the charity and prudent having regard to all the circumstances.

If your charity is contemplating providing financial assistance to its trading subsidiary, then in order to avoid exposing the charity's assets to unnecessary risk (especially in these uncertain times) and to avoid the potential for the trustees being personally liable for any ensuing loss to the charity, I would always recommend that specialist advice is obtained before proceeding.

Filing deadlines

Charity Commission – annual returns and accounts

Annual returns

Charities with a gross annual income of £10,000 or more (and all CIOs regardless of their gross income) must ordinarily file their annual return with the Charity Commission within 10 months from end of their accounting period.

The Commission has confirmed that during this crisis charities that are due to file their annual return *“imminently, but feel unable to do so, can call us to request a filing extension.”*

The Commission's contact centre telephone number is 0300 066 9197. The centre is open from Monday to Friday from 9am to 5pm.

Annual reports and accounts

Remember too that if your charity's gross income is £25,000 or more then the annual report and accounts must also ordinarily be filed within 10 months of the end of the accounting year (but if your charity is a CIO you must file the annual report and accounts regardless of its gross income).

If you cannot file your annual return and accounts on time then you should email the Commission at:-

filingextension@charitycommission.gov.uk

(Although not clear from the Commission's guidance, presumably the above email can also be used for requests in relation to annual returns).

Companies House – accounts

Those charities constituted as companies limited by guarantee (and their trading subsidiaries) must ordinarily file their accounts with Companies House no later than nine months from their accounting year end.

However, you will be able to apply to Companies House for a three months' filing extension. You must apply online and before your accounts are due. Please see the link below to the Companies House guidance:-

<https://www.gov.uk/guidance/coronavirus-guidance-for-companies-house-customers-employees-and-suppliers>

Covid-19 Helpsheet March 2020

© Filanthropia Consulting Limited www.filanthropia.co.uk

AGMs

The governing document of some charities, in particular, those charities with a wider membership, may provide that the accounts must be presented to, and approved by, the members at the AGM.

The Charity Commission recognises that the Government's health advice may lead to some AGMs being cancelled or postponed. In turn, this may make it difficult to finalise annual reports and accounts. If you need to cancel or postpone your AGM, the Commission advises that you record your decision to do so accordingly. Many governing documents will not include specific provisions in relation to the cancellation or postponement of AGMs but if there are such provisions they should be followed.

On 28 March the Government also announced that it would introduce measures to allow companies to hold AGMs flexibly which might include postponing an AGM, holding it online, by telephone, video conferencing or by proxy voting only. Exact details have not yet emerged.

Sarah Chiappini

Director and Solicitor (non-practising)

Filanthropia Consulting

sarah@filanthropia.co.uk

31 March 2020

filanthropiaconsulting
for charities and not for profit organisations

This note provides a general summary only and it does not constitute legal advice. It is recommended that specific advice is sought in relation to the particular facts of a given situation.

If you have any queries regarding any aspect of this note or you would like any advice or assistance please do not hesitate to contact Sarah Chiappini.

Filanthropia Consulting Limited, Heath House, Alldens Lane, Godalming, Surrey GU8 4AP
Tel: 01483 532888 email: sarah@filanthropia.co.uk www.filanthropia.co.uk

Company number 8812064. Registered in England and Wales. Registered office as above.

Details of Government Coronavirus support available to charities

Charities and/or their trading subsidiaries may be able to benefit from some of the measures announced for businesses generally. These are explored below but it will be important to look at the eligibility criteria carefully. Please also see the link to the Government's full guidance on support available to businesses - note that there is no (or very limited) specific reference to charities and it has been necessary to "dig into" the guidance to clarify the position so far as charities are concerned.

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses>

Job retention scheme

The *Coronavirus Job Retention Scheme* applies to ALL charity employers (and charity trading subsidiaries) with a PAYE scheme.

Under the Scheme charities will be able to access support to continue paying part of their employees' salary for those who would otherwise have been laid off during this crisis. The Scheme applies to employees who have been asked to stop working but who are being kept on the pay roll (otherwise described as "furloughed" employees).

The Scheme will be administered by HMRC which will re-imburse 80% of an employee's salary subject to a cap of £2,500 per month.

The Scheme is not restricted to those charities involved in the retail, leisure and hospitality sectors. However, it is likely that those charities (or their trading subsidiaries) with employees working in charity shops, museums and art galleries, theatres, sports centres and stately homes and historic houses and community centres will be among the first to apply for the Scheme.

The Scheme does not apply to contractors/self-employed workers who, if eligible, will need to apply for assistance via the Self-Employment Income Support Scheme that was announced by the Government on 26 March.

How to access the Scheme

Charities will need to:-

- [*Designate affected employees as furloughed workers and notify them of this change.*](#)

It is important to note that changing the status of employees remains subject to employment law. Therefore, if the terms of the relevant employment contracts do not specifically allow for lay-offs and the like, then technically the employer will need to obtain an employee's express consent (which should be recorded in writing). If no such consent is forthcoming then specialist advice sought.

Please do contact me if you need a specimen furlough letter.

- [Submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal.](#)

Deferral of VAT payments

If your charity is registered for VAT, any VAT payments due to HMRC will be automatically deferred from 20 March until 30 June 2020.

Support regarding payment of statutory sick pay to employees

This support package allows small and medium size employers (those with fewer than 250 employees based on the number of employees as at 28 February 2020) to reclaim statutory sick pay (SSP) paid for sickness absence due to the Coronavirus.

How to access the scheme

A rebate scheme is being developed and further details are awaited.

Business rates holiday for retail, hospitality and leisure sectors

Current position re charitable rates relief

Charities that own or occupy property which is used wholly or mainly for charitable purposes are already entitled to 80% mandatory business rate relief and can apply to their local council for a discretionary 100% relief. (Most councils allow, for example, charity shops that are operated via a trading subsidiary and are not therefore technically “wholly or mainly occupied for charitable purposes” to benefit from the 80% relief).

Additional rates relief now available

However, a business rates holiday has been introduced for retail, hospitality and leisure sectors in England for the 2020 to 2021 tax year that have had to close temporarily following the Government’s Coronavirus advice. This relief will be available to those charities (or their trading subsidiaries) and community amateur sports clubs where they own or occupy property as:-

- charity shops
- museums and art galleries
- theatres
- sports grounds and clubs
- sports and leisure facilities
- stately homes and historic houses
- village halls and community centres.

Consequently, charities, trading subsidiaries and community amateur sports clubs that currently do not benefit from the 100% discretionary relief will now so benefit.

Potential limits to the new relief

There are some limits in relation to state aid rules (EU rules about distorting market competition) that the Government is currently clarifying. In any event, these limits are only likely to be relevant to those charities with multiple charity shops.

How to access the scheme

No action required. This will apply to your next council tax bill in April 2020.

Cash grants for retail, hospitality and leisure sectors

Charities, trading subsidiaries and community amateur sports clubs that own or occupy properties for any of the purposes outlined in the section above relating to the business rates holiday may be eligible for a cash grant of either £10,000 or £25,000 depending on the rateable value of their property/ies.

How to access the scheme

You do not need to do anything. Your local authority will write to you if you are eligible. However, if you think you may be eligible for such a grant then it is advisable to make enquiries direct to your relevant local authority.

Specific support for nurseries and pre-schools

Please see the link to the Government's specific guidance below:-

<https://www.gov.uk/government/publications/coronavirus-covid-19-early-years-and-childcare-closures/coronavirus-covid-19-early-years-and-childcare-closures#funding>

Early years entitlement funding

Despite their temporary closure, the Government says that it expects local authorities to continue to pay free early years entitlement places for two, three and four year olds during this time.

The Government has also confirmed that it will not be clawing back early years entitlements from local authorities during closures or where, before their temporary closure, children were withdrawn because of the virus.

Additional rates relief

The rates relief holiday for the retail, hospitality and leisure sectors referred to above will also apply to nurseries and pre-schools that are registered with Ofsted and are providing Early Years Foundation Stage (EYFS).

Small business grant funding

The Government's specific guidance for nurseries and pre-schools confirms that charitable settings that are in receipt of charitable rates relief will be eligible for a small business grant funding of £10,000.

Your local authority will write to you if you are eligible. However, if you think you are eligible for such a grant then it is advisable to make enquiries direct to your relevant local authority.

Grant funding for small businesses

The Government will provide one off grants of £10,000 to small businesses that occupy property and pay little or no business rates because of small business rate relief (SBRR) or rural rate relief (RRR).

Are charities eligible?

Despite the fact that the Government has confirmed that nurseries and pre-schools that benefit from the charitable rate relief can benefit from these one-off grants (see the section above), it appears that charities that occupy property are precluded from this relief because they benefit from the charitable rate relief rather than the SBRR or the RRR.

The Charity Finance Group and the Small Charities Coalition have asked the Government to rethink its position so that small charities can benefit. At the time of writing this note, no response has been received from the Treasury on this issue.

Protection from eviction

Charities and their trading subsidiaries will be protected from eviction if they cannot pay their rent. This will cover an initial period until 30 June, but the government may extend this period.

Please note that this is not a rental holiday and you will still be liable to pay your rent.

How to access the scheme

No action is required. The change came into force when the Coronavirus Act 2020 was passed.

Business interruption loan scheme

The above scheme has been introduced to support small and medium sized entities (SMEs) with access to loans, overdrafts, invoice finance and asset finance of up to £5 million and for up to six years.

There are specific eligibility criteria in respect of this scheme (please see the guidance referred to at the beginning of this section). Even if your charity might qualify for the scheme, great care should be taken as to whether it would be appropriate, in all the circumstances, for your charity to incur (additional) debt in such uncertain times.

It is strongly advised that trustees take expert advice before making any decisions in this regard.