

Minutes of Charity Commission ('CC') and Charity Law Association ('CLA') Liaison Meeting

27 November 2020 at 9.30am

Present

CC

John Maton (JM)
Marion Shanley (MS)
Ruth Douglas (RD)
Sam McGregor (SM)

CLA

Jo Coleman (JC)
Reema Mathur (RM)
Simon Steeden (SS)
Chris Priestley (CP)
Elizabeth Jones (EJ)
Tim Rutherford (TR)
Kate Parkinson (KP)

1 Current issues for the CC

- 1.1 JM provided a general update on current work at the CC.
 - 1.1.1 The CC is still very busy, but interestingly it has not seen a disproportionate amount of work attributable to the pandemic.
 - 1.1.2 The CC has spent the majority of the year addressing its previous backlog of work, meaning applicants etc. should now hopefully experience faster turnaround times.
 - 1.1.3 The CC continues to set internal case handling standards, with aims/targets as to turnaround times.
 - 1.1.4 End of October represents a busy time at the CC as a lot of charities are filing annual returns, with further considerations as to CC business plans.
- 1.2 TR noted that there was an inconsistency in turnaround times between different seniority levels at the CC, paired with disproportionate deadlines for replies from applicants as part of ongoing correspondence with CC case workers, e.g. months for a response from the CC, two week requested turnaround for the applicant. JC and EJ agreed with this observation, although EJ noted that applicants can ask for extensions to deadlines.
- 1.3 In response, JM noted that the difference in response times may relate to complexity, namely the legal/accountancy considerations (as applicable) and the need of compare CC responses against policies. JM to feedback internally on CLA observations on response times.
- 1.4 JM noted the CC is expecting some changes in legislation. These will not be new information, namely the Scottish redress scheme and the new cathedral measures.
- 1.5 The CC is developing some policy areas on the back of news and legal developments, such as responsible investments, secure schools in forthcoming legislation, the high pay report. Acceptance and refusal of donations policy is to be progressed later in financial year (year to end of March 2021).

2 COVID-19 – Impact on the sector (including mergers and insolvencies)

- 2.1 JM noted again that COVID-19 has not had as big an impact on the CC's workload as some had anticipated. It has seen charities reporting SIRs in respect of finances and viability in light of the pandemic, but there had not be a substantive stream of work for the CC as might have been expected.
- 2.2 The CC is considering what response it would have if in coming months a large number of charities find themselves in financial distress.
- 2.3 CLA members noted personal professional experience, agreeing that the impact on the sector has been very diverse. CLA members noted:
 - 2.3.1 a number of charities are adapting their operations to fit their means, or are showing resilience by reconsidering the way they pursue their objects;
 - 2.3.2 that it is likely that applications to the CC for permission to spend restricted/permanently endowed funds will increase in the new year, with mergers the last frontier;
 - 2.3.3 that charity legacy income may be affected, given the link in value to investments/property etc.; and
 - 2.3.4 it is also likely that charity issues with trading subsidiaries will continue.
- 2.4 JC noted that given that mergers are perhaps unfamiliar territory for some trustees, and because there may well be some hesitation from charities to merge (CLA members noted that this could be for reasons of internal cultural differences, hopes that charities may survive without a merger, lack of understanding of process/outcomes) it may be useful for the CC to issue some guidance, or to give thought to doing so.
- 2.5 RD noted that the CC's COVID guidance recognises that there are circumstances where a charity will have to assist its trading subsidiary. The CC knows that it is not easy for trading subsidiaries at the moment, especially in projecting income.
- 2.6 SM noted that there had been an increase in applications to the CC to release funds.
- 2.7 JM noted that the CLA represents a large group of stakeholders, given that members represent so many applicants and so the CLA is well placed to provide informative feedback as service users.
- 2.8 JM noted that if there is a particular urgency to an application then if this is flagged it will be taken seriously.
- 2.9 All discussed generally how charities manage risk in light of COVID-19. This includes not only the risk in respect of safeguarding, but also the maintenance of good governance. It was not noted that, fortunately, a lot of boards are video recording their meetings on platforms such as zoom, providing a better account than just minutes. Not only that, but JC noted that matters move along much faster and efficiently on zoom, plus it is easier for boards to meet more regularly. However, there is a question over whether some trustees would feel comfortable e.g. questioning decisions when using online forum; do they hinder 'full and frank discussion'?

- 2.10 RD questioned how trustees who are less familiar with video conference technology might be managing. CLA members responded with both positive and negative experiences, but ultimately it was noted that at this time there was little choice but to adopt the technology.
- 2.11 General discussion followed in respect of CIGA 2020 and the ability of trustees to use the relaxed rules to update model documents to e.g. accommodate remote meetings. TR noted that the CLA model governing documents group is considering what provisions to include for remote meetings.

3 Recent judgments

3.1 Lehtimäki v Cooper

- 3.1.1 JM explained that the CC does not have a policy yet and because of the judgment handed down, it is not in a position to reach firm conclusions (like most practitioners).
- 3.1.2 RD explained that the CC may consider issuing some guidance, but probably not in the near future.
- 3.1.3 JC asked the CC to consider what it could do even in the circumstances to help add clarity.
- 3.1.4 JC explained that a group of CLA Executive Committee members are considering the CLA's position, which may require the CLA to seek Counsel's opinion.
- 3.1.5 TR mentioned that the CLA is considering what to include in its model governing documents in light of the judgment, although this is in part reliant on what guidance the CC may issue.
- 3.1.6 JM said that the CC needs to consider to what extent the judgment changes anything from a regulatory perspective. EJ noted that the issue for the CC might come when people start amending governing documents to try and limit liability. JM replied that if the CC sees amendments which provide too many private rights for members, then this may start to affect charitable status.

3.2 R v Hackney London Borough Council and Agudas Israel Housing Association

- 3.2.1 JC noted that the Supreme Court provided helpful guidance on how the exemptions under the Equality Act 2010 work. Question therefore whether the CC could include some of the further explanation in its guidance, rather than simply set out the wording of the legislation. EJ noted the Supreme Court's direction on public benefit.

4 Official Warnings

JC asked whether the CC's guidance on the use of official warnings would be updated, due to the development in how the CC is using them. JM did not think so, and all policy reviews are booked for 2021. Therefore the guidance is not to be reconsidered in the short to medium term.

5 AOB

- 5.1 CP asked if the CC had any further reflections/actions on the RNIB case and June's regulatory alert to large operational charities. JM will come back to the CLA on the status of spot checks on select charities in response to the alert. [Postscript: on 30 November JM wrote to those who attended the meeting to confirm that the CC had yet to contact relevant charities on this matter, but planned to do so shortly.]
- 5.2 RM noted that a colleague had received a reply to a registration application which said that only applications for charities working in response to COVID-19 would be considered at this time. JM had not heard of any such CC response nor was he aware of this policy. JM explained that registration applications were down slightly early in the pandemic, but they had now returned to their usual level.
- 5.3 JM mentioned scheduling quarterly meetings in advance.

Next meeting to be end of January/beginning of February 2021