

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

9 February 2020 at 2.00pm

Present

CC

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

CLA

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

1 COVID-19 – Impact on the sector

- 1.1 JM provided an update on the impact of the pandemic for the Commission and as such, the onward inference for the sector. Confirming that since the November meeting of this group, there has been no real change and the Commission is experiencing a similar workload and seeing the same trends, namely not a noticeably large caseload as a direct result of the pandemic.
- 1.2 JM noted that as far as this demonstrates the impact on the sector, the Commission 'only knows what it is told', and that charities may be navigating difficulties without having to involve the Commission. The onward inference from this point being that the Commission may need to reconsider the data it is collecting, to make sure this is as useful as possible. JM noted that Commission data is showing a slight increase in the number of charities in financial difficulty.
- 1.3 JM confirmed that in tracking current cases, there has been no surge in applications to the Commission to release permanently endowed assets. TR noted this does not accord with his experience; his firm's property team is very busy with work to release permanently endowed assets. TR asked if any thought was being given to prioritising such cases, or to the public consultation process for permanent endowment given that the usual 90 days may not be practical to ensure a charity's survival.
- 1.4 In response to TR, JM confirmed that the Commission's Permissions Team prioritises urgent cases, however these must be clearly flagged. If there are specific timescales or deadlines then these should be noted in the application. The Commission has a prioritising framework to ensure that cases are handled appropriately (each case being assigned a priority level of 1-4, based on a range of factors). The Commission aims to address all cases in 30 days.
- 1.5 MS noted that the Registrations Team had staffing issues in January, so a small backlog, but which should be cleared shortly. Over the last 12 months, the Commission has had approximately 8,500 registration applications, which is in line with recent trends, meaning there has not been the anticipated spike in such applications as a result of the pandemic.
- 1.6 SM noted that for the Commission's Permission Team, there are no significant backlogs and as such are broadly keeping to anticipated response times.

- 1.7 JM noted that the Commission is now planning for the forthcoming financial year. As part of this, JM confirmed that the Commission intends to continue to work remotely for the foreseeable future, which has now been integrated into its business planning.
- 1.8 JC asked for an update on how the Commission is dealing with the pandemic from a regulatory point of view. JM confirmed that the Commission's COVID guidance shows the summary, namely to prioritise COVID cases where required and to be as flexible as possible.
- 1.9 JM confirmed that so far, Brexit has not presented significant difficulties for the Commission given that its work is focused on England and Wales.

2 Charities in financial distress

- 2.1 JM noted again that the Commission may wish to consider if it is gathering the right data, for example if property disposals are up (as per TR's experience), then the Commission would expect there to be an increase in e.g. s.117 applications. SM confirmed that the Legal Charity Services Team, which advises case officers handling permissions cases, has not seen an increase in the number of s.117/119 applications. The ones they have seen are also not disproportionately as a result of COVID.
- 2.2 CP noted at his firm's recent annual legacies conference, the majority of charities said they expect their legacy income to increase over the coming months given i) recent delays with probate administration will likely be resolved, and ii) sadly death rates have gone up. Charities are taking care to ensure that legacies are accounted for correctly, for example to avoid funds being accidentally noted for only restricted purposes.

3 Kids Company and trustee disqualifications

- 3.1 JM confirmed that the Commission is ready to respond to the imminent Kids Company judgment. JC asked if the Commission plans to publish guidance in response, as the judgment has the potential to unsettle the vast majority of trustees. JM confirmed that the Commission will consider what is appropriate at the time.

4 Ethical Investments – CC14 revisions

- 4.1 JM confirmed that the Commission has nothing particular to say on this matter at present and cannot confirm when the consultation on this guidance might begin; it could potentially be this spring/summer.

5 Law Commission Bill

- 5.1 RD noted there is a CLA working group looking at this. Generally the Commission is supportive of the Bill and is pleased that the Government is looking to respond to the Law Commission's report.
- 5.2 CP as Chair of the CLA working party has nothing to add on this, noting that the CLA is considering the Law Commission's drafting predominantly in consideration of the passage of time since the Bill was first published.

- 5.3 RD further noted the need to push the Bill through, given that it has a limited shelf life. As the content is not contentious, the hope is that the Bill will pass quickly if introduced. The Commission is supportive of the measures that would be brought in.

6 Trustee declarations being sent back

- 6.1 TR noted the Commission's trustee declaration form has been updated. Since this update, CLA Executive Committee members had had signed versions of the old form returned, despite there being no substantial difference to the forms (a website link has simply changed).
- 6.2 MS agreed that the form has not changed substantively and would speak to the Registrations Team. TR invited to email the example to MS.
- 6.3 TR noted that the form changed without notice. It would be helpful to have a lead in time for changes such as this given the administrative burden that this could create, as such creating time and cost implications for charity clients. MS agreed.

7 Ex gratia applications

- 7.1 CP explained that at his firm's recent legacy event, some charities asked if the Commission has changed its approach to ex gratia applications.
- 7.2 JM noted that the Commission may reasonably request further information as to why trustees consider they are morally obliged to make an ex gratia payment. SM further explained that in terms of s.106 applications, the minutes of the trustees should be clear as to the moral obligation meaning the Commission would not require further information. If there is a request for further information then it may be that the Commission requires more objective evidence as to moral obligations. There has been no formal policy change.

8 CIFF case

- 8.1 JC confirmed that the CLA working party has prepared instructions to counsel. The next step is to determine which counsel to instruct, in consideration of expertise, as well as CLA budget.
- 8.2 JM requested that the CLA and Commission continue to talk about the case and its implications. JC asked what the outcome meant for the Commission's case work? JM confirmed that the CIFF case is not a priority for the Commission and it is not proactively looking to put out guidance in response to the judgment. However, the Commission does appreciate that there will be a knock-on effect for its case work, although it is not clear what this will be given that the sector itself is not clear on the implications of the case.
- 8.3 JC confirmed the CLA will share counsels' opinion.
- 8.4 EJ noted that the Commission should offer some guidance in response, to support charities who will want to explain to their members' what their obligations are. CP suggested that RS7 might be revised, including what membership means. JM noted that this would be a significant piece of work for the Commission, requiring significant time and consideration, as well as sign off at the various necessary levels. The Commission has a small Policy Team, and the nature of the work is likely beyond the scope of the next financial year, particularly as there are

significant pieces of guidance already in the pipeline, as well as the previously prioritised 'Five Minute Reads'.

- 8.5 CP queried if a solution might be for another body to take the lead and revise the policy (or create new guidance), which the Commission would then endorse. JM explained that the Commission could not use such a document in the same way as its regulatory guidance meaning the result would not be as effective.

9 Post-RNIB interviews

- 9.1 JC asked if JM could share any insight on the interviews for those charities selected after receiving last summer's post-RNIB regulatory alert. JM confirmed that no Commission lawyers are involved and a sample of only 20 charities were being interviewed.
- 9.2 KP asked what the next steps would be for those charities who have been interviewed. JM was not in a position to comment on this; it may be that there is some general report on the Commission's findings.

10 AOB

- 10.1 TR explained that his team had experienced a seemingly new Commission policy of asking that trust deeds be completely rewritten (post e.g. a regulated amendment application), rather than accepting a supplemental deed noting where e.g. certain paragraphs have been deleted. This is something that the Commission used to do. JM was not aware of this but invited TR to email him about this as it may be better to adopt this policy again if more time and cost effective for charities.
- 10.2 SS provided an update on the CLA conference, confirming that the uncertainty as to ongoing lockdown restrictions means that the conference will be online again this year. SS invited the Commission to speak. JM confirmed that the Commission would be pleased to. The Commission has a new centralised communications function which should co-ordinate this. SS/KP/JM to speak around March regarding possible topics.
- 10.3 JM noted that there will shortly be an overhaul of the Commission's case management software, which should fix a lot of the problems many have encountered re. missing emails in and out of the Commission. There will be external communications about this.
- 10.4 JC asked if it is possible to have a Commission organigram. JM will look into this.
- 10.5 CP asked if there is any news about Baroness Stowell's replacement. JM confirmed there will be an interim Chair but the Commission has no update on who this will be. As the position is a DCMS appointment, Commission staff are likely to find out at approximately the same time as the public.

Next meeting TBC (likely May/June)

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