

Covid-19 : Guidance for third sector organisations on governance matters

The UK Government's £30 million pledge to Scottish charities has been welcomed by everyone operating in and providing advice to our third sector. However, charities applying for the funding are still likely to face cashflow issues as their need is very much immediate so pressures remain immense.

Maintaining good governance will still be crucial if charitable organisations are to protect both their and their trustees' positions.

Given these challenges many have concerns about how their organisations will be able to continue operating to provide their critical services to beneficiaries. This guide summarises some of the key matters on which our clients and contacts have enquiries.

Please note, due to the pace at which the situation is evolving, the following information can only seek to offer insights as at the date of publication. It is acknowledged that the position may change over the coming days, weeks and months.

Making decisions

Decisions about how your charity adapts to operating in the current circumstances should be taken collectively by trustees.

Being sensible and realistic will be key to helping your organisation successfully navigate the challenges. It's important to show that matters are being dealt with so keep a record of everything considered and minute any major decisions and changes.

There may also be concerns about having enough people to make decisions and form a quorum. Your governing document can be amended to change the number of people required and if you choose this route you should notify OSCR of the change. If you are unsure of how to resolve this issue, it's important to seek legal advice.

Virtual meetings and AGMs

Trustees are unlikely to be able to meet face-to-face to make decisions so will need an alternative means to discuss options for the charity.

OSCR have confirmed that in the current situation, whether or not you have specific provisions in your charity's governing document to allow meetings to be held over the phone or using digital platforms, you are permitted to hold virtual meetings. Again, the decision to do this should be minuted to demonstrate good governance.

If your organisation is required to hold an AGM it may be possible to postpone it. Constitutions rarely specify which month of the year it should be held, just that it needs to happen during the calendar year. This is another decision to be recorded.

Note that Lindsay's Partners and staff can participate in virtual meetings as required.

OSCR advise that if possible you should still submit your report and accounts which can be done online. However, they will take 'an understanding and proportionate approach'.

Trading subsidiaries and trustee liability

Many charities operate trading subsidiaries to generate funds, however, the current lockdown means that these units may be struggling.

The UK Government is making or has already made various forms of support available including business grants, relaxing insolvency laws and temporarily suspending wrongful trading provisions.

Trustees have a duty to put the interests of the charity first. If a trading subsidiary is likely to be operating at a loss with no benefits or return for a lengthy time, charitable assets could be put at risk. Decisions must be made in the best interest of the charity and everything considered must be noted for reporting.

This is only the tip of the iceberg when it comes to some of the issues and challenges you may be facing as a charity trustee. Maintaining good governance will help ensure a better future for your organisation, far beyond the current pandemic.

For more information on the support available for organisations facing insolvency, please see our guide [here](#).

Notifiable events

If the current situation is likely to have a serious impact on the charity in the longer term, e.g. being able to carry on with your activities, then notify OSCR under its Notifiable Events regime. Also ensure that a record is made of decisions taken and the reasons for them.

Financial liability and funding

It is important to prioritise the right financial obligations during the current cash-flow restricted times and third sector leaders should consider questions such as:

- What risks do we face?
- Are we solvent and how do we future test this?
- Are we structured as a limited liability legal entity i.e. company limited by guarantee or SCIO?

The Government has provided support in the form of various funding opportunities so consider and discuss what your organisation is eligible to apply for. Funds include the Third Sector Resilience Fund, the Wellbeing Fund, the National Emergencies Trust, Independent Grant Funding and Scottish Government Funding (see the resource links at the end of this guide for details).

Employment and furlough

Since the 23 March, the Government *has* required that all those who can work from home to do so and to stay at home unless required to go out for food, health reasons or essential work. Those who must leave home to travel to work may do so, but only if this absolutely cannot be done from home and should remain at least 2 metres from other people.

Third sector employers now face considerable challenges and many decisions with regard to keeping staff safe and adhering to the guidelines while attempting to maintain business operations as

appropriate and avoid business failure. Matters include sickness, self-isolation and pay, laying off staff or short-time working, home working and childcare considerations.

For more information on dealing with staffing matters, see our [employment FAQs](#) and [furlough FAQs](#)

Furlough for public funded organisations

Guidelines state that organisations which receive public funding to support staffing costs cannot furlough staff, which impacts upon many charities. However, it may be appropriate in some cases.

Third sector organisations which receive public money may, in certain circumstances, still be able to place staff on furlough. They should certainly not be put off making an application to HMRC for staff in situations such as:

Fundraising shops and teams – due to the necessity to close shops and pause all events there will be no income and staff could be furloughed. If you don't furlough them, you face having to make them redundant.

Social care bank workers - where they are unable to do their work at the moment it's worth making an application.

Charities which receive public money for staffing with employees who cannot work because they are shielding - or because they live with someone who is shielding - should also be entitled to be placed on furlough.

Property matters

Many charities and third sector organisations are tenants and are facing significant rent payments for property leases.

Temporary legislation came into force in April extending the amount of time for tenants to settle arrears. It delays lease terminations but does not freeze tenants' obligations, both financial and non-financial (eg repairing obligations) which are still due.

The only change is to how quickly a landlord can move to terminate a lease for non-payment.

The best way to deal with any concerns or issues is to communicate with landlords.

If you would like more information on this issue please read our [guide for commercial property tenants](#).

Support and information sources

OSCR – further guidance on how to adapt to deal with governance issues can be found on the OSCR website [here](#).

[The Coronavirus Third Sector Information Hub](#) is an essential centre of guidance collated through SCVO, ACOSVO and OSCR.

If you would like support or guidance regarding your specific situation, please get in touch with your usual contact at [Lindsays](#) or a member of our [Third Sector team](#).

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