

BULLETIN APRIL 2010



This is a bulletin which I send out regularly to around 10,000 clients, contacts, friends, friends of friend's so forth, to keep them in touch with what's going on in the world of charities. Tip: if, like me, you have a low attention span, scroll down to the...And finally, which hopefully won't disappoint?

Daryl Martin

TRUSTEE BEING SUED FOR PENSIONS DEFICIT:

Recently I read that the combined pension's deficit of the 20 largest charities is around £720m. This is a ticking time bomb for a lot of smaller charities who may not have picked up on their own position. The chair of a YMCA is currently being sued personally for his charity's share of a deficit. He is fighting it, but already legal costs are racking up. Legally, trustees of an unincorporated charity are personally liable for the debts of their charity. This particular case has been sent to a higher court, so it will get even more costly. If your charity isn't incorporated and there are any elements of risk, [ask Rachel](#) to send you our incorporation pack.

CHARITY COMMISSION ORDERED TO PAY £50,000 COSTS TO CATHOLIC CARE AFTER HIGH COURT DECISION:

I sometimes wonder if the CC isn't a bit trigger happy at times when it comes to providing work for lawyers (I still haven't got over the time they foolishly gave approval to a charity to sue the very wealthy Franklyn Mint; a story I often tell). This time they got bitten when they refused to allow this Catholic Care to change its objects to enable them to take advantage of a clause in the Equality legislation. The charity sued and won. Andrew Hind is concerned that the increased risk of exposure to costs is a worry. I understand his concern about deciding legal issues on cost grounds. This isn't good. It's not good either to be deciding issues on political grounds. They should stand not above the law but certainly above political correctness, which this decision smacked of.

ARE YOUR STAFF ADEQUATELY PROTECTED?

Recently, in my travels, I called in at a charity in London. It was based in quite a rough area; the door had good security locks but it wasn't locked when I walked in. Clearly people were coming and going during the day, but when I called there was one young lady on the premises, quite alone and to my mind, quite vulnerable. On a different note, a mental health charity has just had to pay out £50,000 after allowing a young lady, still on

Daryl's Blog

Updated: 30/04/2010



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probation, to make a home visit on a man with a history of violence whose mental health was deteriorating. The young lady was killed. Thankfully this is rare, but the trustees of this charity, money aside, will be asking themselves 'till the day they die, why they didn't put effective controls in place to manage the risk. The H & S people said, rightly that, 'paperwork doesn't save lives ... policies must be followed through'. Trustees, you must be in evidence. In my briefings I ask trustees whether there are any 'no go' areas in their charity which are off limits to them. I get some interesting responses. If you have 'no go' areas, it might be time for one of my talks to see what other dysfunctional behaviour might be lurking.

PUBLIC BENEFIT TEST:

This is something we are having to get to grips with, particularly as we set up new charities. Whilst the Charity Commission is being helpful and understanding, they have a job to do; don't be complacent and make assumptions that you'll be OK. Look at the issue sensibly and [call us](#) in if you need an outside view. During initial CC reviews, 2 fee paying schools and a care home failed the test.

CIO (CHARITABLE INCORPORATED ORGANISATION):

I still get asked about when they will see the light of day. Secondary legislation is still needed so we need to see what happens after the election. I don't think they will ever get off the ground, but if they do, they need to be tested; the regulations will be complex, and we need to be happy they are fit for purpose. If yours is an unincorporated charity and there is a reason to incorporate, I suggest you get on with it.

EMPLOYMENT MATTERS:

A recent European law decision means that public sector workers are entitled to additional leave if they are certified as sick during booked annual leave. This conflicts with the Working Time Regulations 2008, but if you do get a request to reassign annual leave, refusal may not survive a legal challenge. Don't forget we have HR resources to help you with any issues.

GIFT AID:

The new 50% tax rate, and the withdrawal of personal allowances for high earners (you'd forgotten that hadn't you, called taxation by stealth) means there are interesting opportunities for high earners if they are generous givers, which they should be of course. I have been struggling to get my mind round the complexities of the Gift Aid implications, thankfully, stewardship.org.uk have come to the rescue with 2 excellent papers on this topic, which you can download from their website. Briefly, Gift Aid relief is given on the highest rate and if you are just above the high earnings threshold, judicious use of Gift Aid could restore some of your allowances.

GIFT AID (2):

HMRC is about to make life more interesting for charities. When a new person is nominated to submit tax returns or claim Gift Aid, they will run checks to see if that person is 'fit and proper'. It's to counteract fraud, the



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implication being that the Charity Commission's checks are not adequate to ensure that fictitious charities are weeded out. Being, hopefully, a 'fit and proper' person myself, I don't have any particular problem with this, apart from the usual anxiety as to where this particular path will take us to. Appreciate any feedback on this.

DARYL'S BLOG:

I get a lot of fun out of this; the '[Ready, Aim, Fire](#)' or '[Ready, Fire, Aim](#)' is worth a read: points out a reason why teams can get so stressful at times.

CHRISTIAN RESOURCES EXHIBITION:

Still time to [ask us](#) for tickets. If you let us know which day you plan to come we can tell you who's around. Tony will be there on Tuesday and Thursday for anyone who has IT related questions. Late evening Thursday for the first time (Could have done without that!)

AND FINALLY... (being the main or only thing a lot of people read)

School reports from the Daily Telegraph letters pages. These are the best of the bunch:

SIR – My brother once said: 'Continues to amuse himself, but sadly no longer us'.

SIR – One of my son's reports ran: 'The tropical forests are safe when John enters the woodwork room, for his projects are small and his progress is slow'.

SIR – One of my masters once reported: 'French is a foreign language to Fowler'. Another French teacher wrote: 'By the time he has mastered French, he will be too old to cross the Channel'.

SIR – My English teacher wrote: 'The stick and carrot must be very much in evidence before this particular donkey decides to exert himself'.

SIR – 'The improvement in his handwriting has revealed his inability to spell.'

SIR – Of a 5 year old who had just completed his first year: 'David participates in all classroom activities, but more in the capacity of executive rather than actual workman'.

SIR – 'I am sorry to have to tell you that he is doing his best'.



Company Secretary Service:

A number of Charities have already signed up to this new service. [Contact us](#) for details.



Gift Aid:

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