

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

Guidance note

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## Contents

<b>1. Introduction and context</b>	<b>3</b>
<b>2. Getting the basics right</b>	<b>4</b>
2.1 Charity law	7
2.2 Company law	8
2.3 Health and safety legislation	8
2.4 Governing documents	9
<b>3. Identifying the potential liabilities</b>	<b>10</b>
3.1 General risks	11
3.2 Health and safety	12
3.3 Corporate manslaughter	12
3.4 Insolvency	14
<b>4. Safety first</b>	<b>16</b>
4.1 Assessing the risk of re-opening	16
4.2 Risk assessment template	20
4.3 Staff consultation framework	23
4.4 Re-opening checklist	23
4.5 Action group	25
4.6 Communications	26
4.7 Test and change	27
<b>5. Reasonable decision making</b>	<b>28</b>
5.1 Valid meetings	28
5.2 Better papers	31
5.3 Reasonable decision-making framework	33
5.4 Record and retain	34
5.5 Review and revise	34

If you have any feedback on the content of these resources, or additional questions that you'd like to discuss, please contact The Chartered Governance Institute information centre:

**020 7612 7035 | [informationcentre@icsa.org.uk](mailto:informationcentre@icsa.org.uk)**

© The Chartered Governance Institute, 2020

The information given in this guidance note is provided in good faith with the intention of furthering the understanding of the subject matter. While we believe the information to be accurate at the time of publication, The Chartered Governance Institute and its staff cannot, however, accept any liability for any loss or damage occasioned by any person or organisation acting or refraining from action as a result of any views expressed therein. If the reader has any specific doubts or concerns about the subject matter they are advised to seek legal advice based on the circumstances of their own situation.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 1. Introduction and context

Since May 2020 the government has announced various steps in the easing of lockdown, including a focus on those who are unable to work from home returning to work. By mid-July there was government movement to encourage others to return to their normal workplaces in order to re-energise the economy.

For many charities, this has led to much thought about how to re-open offices and other sites in a controlled, measured and safe manner. It is unlikely that all activities will return to a pre-lockdown situation for the foreseeable future. Some old ways of working may be discarded and replaced with new technology and approaches. However cautiously organisations re-open physical spaces, the trustees and senior management team (SMT) will need to work together to ensure the return is safe, effective and suitably flexible to respond to further local or national lockdowns.

This document aims to provide an overview of the fundamental issues trustees should be considering when deciding whether and how to re-open physical sites. It summarises important documents from the government and signposts readers to sources of guidance to help inform discussions, decisions and actions. It provides a top-level view of the legal duties placed upon the board and suggests topics and questions to discuss further to fully understand the needs of each charity. The guidance is not exhaustive, and could not possibly be, because of the diversity of the sector and the continuing development of related regulations. It does not represent legal guidance but offers practical steps to help trustees and the SMT thoroughly review the situation and what needs to be done to open up safely. The situation is subject to constant review and revised or new government guidance. As such readers are encouraged to keep abreast of official guidance around opening up work places safely and any directions relating to local, regional or national (and international, where relevant) lockdowns.

At any time, but especially now, it can be a challenge to ensure that the charity is being run properly, meeting its strategic goals and complying with fast-moving lockdown arrangements. In fulfilling their legal duties, trustees must seek information from the SMT to assure themselves that the charity is being run in a safe, sustainable, and professional way, while still furthering its stated charitable objects. While the role of the board is to focus on strategic matters,<sup>1</sup> compliance and oversight requires a certain amount of insight into operational aspects, especially in the current crisis. Any decision to open up a charity's physical activities and sites must be made by the board of trustees, collectively, in consultation with the SMT. The executive is responsible for developing and implementing plans to re-introduce on-site activities. The board is accountable for those actions and outcomes. It is therefore essential that trustees are assured that proposals and actions meet government requirements, as a minimum.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 2. Getting the basics right

For many trustees and SMTs, the health and welfare of clients, volunteers, staff and other visitors is of utmost concern in normal circumstances. That care, consideration and attention to detail will need to be doubled to counter the risk of COVID-19 as physical spaces re-open and charity activities recommence. Trustees and the SMT have to be aware of their legal duties under a range of legislation to make sure they do not unduly place people at risk. Keeping abreast of government and other statutory guidance is essential. Accessing documents from the government website is advisable to ensure one is working with the most up-to-date versions.<sup>2</sup>

Following the government's announcements to ease lockdown conditions, it has produced guidance for specific sectors and the general public on how best to maintain social distancing whilst starting the process of re-opening some parts of the UK economy.

The core document in May, 'Our plan to rebuild: The UK Government's COVID-19 recovery strategy',<sup>3</sup> provided a general overview of the ways in which lockdown provisions would be eased over the following months. Additional guidance from the Department for Business, Energy and Industrial Strategy (BEIS) provided more specific details for employers and employees. The 'Guidance to help employers, employees and the self-employed understand how to work safely during the coronavirus pandemic'<sup>4</sup> incorporated eight specific guides, which cover:

- construction and other outside work
- factories, plants and warehouses
- labs and research facilities
- offices and contact centres
- other people's homes
- restaurants offering takeaway or delivery
- shops and branches
- vehicles

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

In June, the Ministry of Housing, Communities and Local Government released 'COVID-19: Guidance for the safe use of multi-purpose community facilities' and the Cabinet Office produced 'Staying alert and safe (social distancing) after 4 July,'<sup>5</sup> detailing the steps to be taken where two-metre distancing cannot be reasonably met.

Many charities will need to read more than one of the above documents, though some of the general guidance applies to all types of activity.

In brief, the overarching principles include:

- Maintain the two-metre distance between individuals, as far as is practicable – and where that cannot be done, consider not performing the activity in question or limiting the time in which such close contact is required. Where one-metre limits are used, face masks and other measures should be used to limit risk.
- Undertake a risk assessment, in consultation with staff, represented by a union official or staff nominated employee. For those charities with over 50 employees, the completed risk assessment must be published (on the charity's website).
- Continue to comply with equalities and health and safety legislation.
- Be aware of those individuals that are most 'at risk' and take the appropriate measures to mitigate risk.
- Respect and promote self-isolation.
- Minimise visitors and record those that do come on site.
- No-one is obliged to work in an unsafe environment.

A third piece of guidance released in May covered the use of public transport and other ways of travelling as the lockdown is eased. 'Coronavirus (COVID-19): safer travel guidance for passengers'<sup>6</sup> details tips to maintain social distancing. For trustees and the SMT, the guidance will help inform their conversations and decisions about what sites can be opened or activities re-started safely.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

In addition to guidance from the government, trustees should also have regard to the briefings from the Charity Commission (the Commission). The Commission has been regularly updating its guidance for charities during the lockdown and it is worth signing up to ensure you receive their latest statements.

The Commission's COVID-19 web page<sup>7</sup> covers a range of topics including:

- government financial support for charities
- AGMs and other meetings: postponing or cancelling meetings
- holding meetings online or by telephone
- using reserves and restricted funds
- further advice on managing financial difficulties
- charity objects: understand if you can help with coronavirus efforts
- reporting serious incidents to the Charity Commission
- keeping people safe
- fundraising and coronavirus appeals
- working with a company or business to help with coronavirus issues
- charity statement of recommended practice (SORP) guidance
- cyber-crime and fraud<sup>8</sup>

The Charities SORP publishes briefings about reporting COVID-19 related financial information, including adding a statement to the annual report and accounts.<sup>9</sup> There is also FRC guidance to help directors assess the level of 'going concern' of their charity.<sup>10</sup>

The Commission has proved flexible in some regulatory aspects, empathising with the difficulties presented by lockdown measures. Trustees and senior managers, however,

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

should not ignore the governance demands placed upon charities. Doing the basics well is crucial to demonstrating that trustees have acted in good faith while complying with their legal duties in these difficult times.

While the flexibility is most welcome, COVID-19 has not removed the trustees' responsibilities under the law. Common sense is advisable when the 'business as usual' approach to trustee and SMT activities is no longer possible. It is essential that trustees continue to hold meetings and exercise oversight of the activities of the senior management team and the charity and can evidence this (see section 5).

## 2.1 Charity law

Ultimately, trustees are responsible for the governance and leadership of the charity. The Charities Act 2011 defines trustees as '...the persons having the general control and management of the administration of a charity' (s.177). When making a decision to re-open physical sites and re-start charity activities, it will be the trustees, in liaison with the SMT, who will make the final decision.

The legal duties of trustees are listed in 'CC3 – The essential trustee: what you need to know, what you need to do'<sup>11</sup> :

- ensure your charity is carrying out its purposes for the public benefit
- comply with your charity's governing document and the law
- act in your charity's best interests
- manage your charity's resources responsibly
- act with reasonable care and skill
- ensure your charity is accountable

When considering how to re-open physical sites and activities, the trustees will need to balance their legal duties to carry out the charity's purposes using reasonable care and skill and safeguarding those with whom the charity interacts: staff, volunteers, clients, suppliers and visitors. Suspending charitable activity unduly could be seen as trustees not fulfilling their legal duties under charity law.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 2.2 Company law

The duties of trustees are very similar to those of company directors. For charitable companies, Part 10 of the Companies Act 2006 details the specific legal duties placed upon company directors. These are:

- duty to act within powers;
- duty to promote the success of the company;
- duty to exercise independent judgement;
- duty to exercise reasonable care, skill and diligence;
- duty to avoid conflicts of interest;
- duty not to accept benefits from third parties; and
- duty to declare interest in a proposed transaction or agreement.

Section 174 sets out a director's duty to exercise reasonable care, skill and diligence. This duty will apply to the rolling out of a phased re-start programme. A director (and trustee in a charitable company) is expected to exercise care, skill and diligence. However, for directors (and therefore trustees) with specific skills or expertise, that expectation is raised.

## 2.3 Health and safety legislation

Trustees and senior managers should already be familiar with their duties under health and safety legislation, but will benefit from refreshing their understanding in light of the COVID-19 pandemic. The Health and Safety at Work etc. Act 1974 is the primary piece of legislation covering workplace safety. It is based on common sense and safe practice, with employers responsible for the health and safety of their employees at work 'as far as is reasonably practicable'. The regulations apply equally to staff and volunteers.

Under the Management of Health and Safety at Work Regulations 1999, the minimum an employer must do is:

- identify what could cause injury or illness in your organisation (hazards)

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- decide how likely it is that someone could be harmed and how seriously (the risk)
- take action to eliminate the hazard, or if this isn't possible, control the risk

Further details on assessing risks and putting in place effective control measures are covered in Section 3.

Trustees and SMTs should be aware of their duties under the Reporting of Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR). The Health and Safety Executive (HSE) has issued guidance in relation to the reporting of COVID-19 under RIDDOR. It states that a report should only be made when one of the following circumstances applies:

- an accident or incident at work has, or could have, led to the release or escape of coronavirus. This must be reported as a dangerous occurrence;
- a person at work (a worker) has been diagnosed as having COVID-19 attributed to an occupational exposure to coronavirus. This must be reported as a case of disease; and
- a worker dies as a result of occupational exposure to coronavirus. This must be reported as a work-related death due to exposure to a biological agent.<sup>12</sup>

There is no requirement under RIDDOR to report incidents of disease or deaths of members of the public, patients, care home residents or service users from COVID-19. The reporting requirements relating to cases of, or deaths from, COVID-19 under RIDDOR apply only to occupational exposure, that is, as a result of a person's work, as detailed above. Further guidance on what and when to report under RIDDOR can be found at the HSE website.<sup>13</sup>

## 2.4 Governing documents

It is worth remembering that trustees should be acting in accordance with specific legislation and the requirements of the charity's governing document. In some instances, it is possible the governing document requires a higher standard of action or decision-making than provided for in legislation. Trustees should already be aware of the provisions in their governing document, but investing time in re-reading the document, especially with regards to trustee (and member) meetings, is advisable.

Section 5 deals with trustee meetings and decisions in more detail.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 3. Identifying the potential liabilities

Liability occurs when charity trustees or, in certain circumstances, staff and members have acted illegally. As trustees are usually seen as a unit or collective they are considered to be jointly and severally liable for their actions. Being jointly and severally liable means that each trustee may be personally liable for all, or part, of an obligation incurred by the charity.

Trustee liabilities can take many forms, and some will arise from the structure of the charity, for example a charitable company limited by guarantee will be subject to the requirements of insolvency legislation, while trustees of unincorporated charities could be personally liable for a charity's debts.

It is rare, however, for an individual trustee to face personal liability. Depending on the part each trustee played in the breach, the court will decide each person's contribution to the liabilities incurred.

Assessing the risks posed by re-opening offices and re-starting physical charity activities after the easing of lockdown conditions during the pandemic are core to trustee decision-making. The principles of risk identification and management apply in order to limit the exposure of individuals and the charity to unnecessary risks which could give rise to specific liabilities. Appropriate and effective mechanisms should be in place for handling all risks, not just those related to COVID-19. The Chartered Governance Institute has guidance on trustee liabilities,<sup>14</sup> which covers the wider range of potential liabilities of trustees.

Where trustees do incur liabilities (e.g. debts or financial obligations), these may be met out of the charity's resources, assuming these are sufficient to cover the losses. It should be borne in mind, however, that as long as trustees act prudently, lawfully and in accordance with the governing document and have accessed all reasonable means of support and guidance, the Charity Commission<sup>15</sup> and the courts are more predisposed to exonerate trustees from any personal liability resulting from their actions or inactions. But as stated above, those trustees with specific skills and expertise will be held to a higher duty of care.

Where trustees have acted imprudently, negligently or are otherwise in breach of the law or the governing document, they may be personally responsible for liabilities incurred by the charity, or for making good any loss to the charity. This may extend to the actions trustees undertake, or do not undertake, in order to recover charity assets lost as a consequence of wrongdoing.<sup>16</sup>

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 3.1 Health and safety

Failure to comply with health and safety legislation will primarily fall upon the organisation if it is an incorporated body (see below). However, in certain, rare, circumstances, individual trustees can be personally liable. Personal criminal offences can be applied to a director (trustee), manager, secretary or similar officer where the breach occurred with an individual's consent or connivance. However, for a court to find an individual (as opposed to the corporate entity) responsible, it must be satisfied that:

- the breach was of a criminal standard by the corporate entity; and
- the individual is a director, officer or manager of the organisation, or holds him or herself out to be one.

The application of principles of consent, connivance and neglect depend on the individual circumstances, but include:

- Consent to a breach: can be either explicit or implied and revolves around the individual having knowledge or awareness of the risks.
- Connivance in a breach: can be summarised as the individual turning a 'blind eye' to the situation.
- Neglect: an individual did not make themselves fully informed or aware of the situation.

There is a risk of civil action against an individual where an organisation's or individual's action equated to negligence. This could result in personal injury or losses. It does not necessarily follow that a COVID-19 infection acquired on a charity's premises or as a result of performing charitable activities will incur civil liability. But trustees and the SMT should be able to demonstrate reasonable care and skill when considering the risks of re-opening physical sites and contact.

Employees also have duties concerning their own safety at work which include:

- taking reasonable care for their own health and safety and that of others who may be affected by what the individual does or does not do;
- co-operating with the employer on health and safety;

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- correctly using work items provided by the employer, including personal protective equipment, in accordance with training or instructions; and
- not interfering with or misusing anything provided for health, safety or welfare.

All employees should be regularly reminded of their obligations. Volunteers should also be given clear guidance and instruction on COVID-19 risk mitigation actions, as they would with other health and safety issues.

Trustees should seek and follow professional advice when considering matters outside their competence or experience. The charity should make the provision of such advice available to its board of trustees. A record of the advice given and action taken as a result (including if the advice was not followed) should be kept.

## **3.2 Corporate manslaughter**

A further potential risk to organisations could arise in the form of corporate manslaughter.

The Corporate Manslaughter and Corporate Homicide Act 2007 means that companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.

Where a breach is deemed to have taken place, it will be the corporate body and not individuals who face prosecution. However, the liability of directors (including trustees in corporate entities), board members or other individuals under health and safety law or general criminal law will be unaffected. The corporate entity itself and individuals can still be prosecuted for separate health and safety offences.

## **3.3 Insolvency**

For many charities, as with other organisations, there will be a need for trustees and the SMT to keep an eye on the finances. For incorporated charities, and those charities with trading activities where trustees undertake obligations knowing that the charity is insolvent or likely to become insolvent during the obligation, those trustees will be liable for any debts arising from that action, as outlined in the Insolvency Act 1986.<sup>17</sup>

Insolvency occurs when a charity is unable to pay its debts when they fall due (cash flow test) or where the value of the assets do not cover the debt incurred (balance sheet test).<sup>18</sup>

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

The Corporate Insolvency and Governance Act 2020, introduced during the pandemic to assist companies and other incorporated bodies, offers some relaxation of the insolvency and fraudulent trading regime. The Act includes the temporary suspension of the wrongful trading provisions<sup>19</sup> while companies endeavour to deal with the effects of the lockdown and ongoing economic climate.

Insolvency is a complex aspect of financial management and it may be necessary for trustees to seek specialist advice in order to avoid liabilities.

Charity costs are unlikely to have changed much as a result of the current situation, but income may be taking a real hit. As such trustees and the SMT should be keeping an even closer eye on the finances and, in particular, cash flow. The following points should be useful prompts for trustees in managing the situation.

- Is there sufficient cash available to pay debts when they fall due?
- Are trustees clear as to what assets can be liquidated and used to pay general costs? Is there sufficient clarity about designated, restricted and endowed funds and what they can be used for?
- Do trustees know at which point the organisation might tip into wrongful trading? Is there an agreed point at which to act before reaching that position?
- Does the charity have a list of creditors, detailing debts and when they are due to be repaid? Does the list cover early termination clauses in leases and contracts?
- How often does the board ask itself if the charity continues to be a 'going concern'?
- Do trustees require more detailed information more frequently to assess the situation in a timely manner? What information is needed and how frequently? Have trustees agreed trigger points where insolvency advice would be required?
- What is the financial outlook for the charity in the immediate, medium and longer term? What actions should be taken now to improve financial forecasts?
- Do the minutes of the board accurately reflect the discussion and decision made around financial considerations?

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 3.4 Preventing risks from re-opening after lockdown

It will be impossible for any charity to avoid all risks associated with re-opening after lockdown. Some risks will be applicable to most charities, such as social distancing and hygiene standards, while others risks may arise from the structure of the charity (see 3.3).<sup>20</sup>

Steps that all organisations can take to minimise the risk of prosecution arising from health and safety breaches or corporate manslaughter include:

- ensure compulsory health and safety guidelines are in place and strictly adhered to by all employees, contractors and volunteers;
- comply with the Health and Safety at Work, etc. Act 1974. It should be noted that to be convicted under the Corporate Manslaughter Act does not necessarily mean that the organisation and even a particular individual will not also face prosecution under the Health and Safety at Work, etc. Act 1974 as well. The decision whether to bring a prosecution (under the 1974 Act as well as the 2007 Act) will be based on a test of public interest;
- follow government guidance relating to COVID-19 and working safely;
- provide strong and effective leadership on health and safety from the top of the organisation, and possibly appoint a lead trustee to have responsibility for this area of the organisation's activities and regularly report on it to the board;
- maintain a culture that communicates information about mistakes that do not have adverse or serious consequences, so that lessons can be learned from them;
- ensure all members of the SMT are aware of their roles with regard to health and safety and what is expected of them;
- ensure all employees, volunteers and outside contractors are aware of the safety measures and the guidelines that have been put in place;
- constantly review the health and safety policy and ensure it is up to date, adhered to and reviewed regularly;
- be aware of, and follow HSE specific guidance;
- offer health and safety training and in some cases make it mandatory;
- when making decisions which may have implications for safety ensure that safety is a priority, and ensure when making policy decisions affecting the organisation that health and safety is always considered;
- ensure comprehensive records are made and maintained regarding health and safety discussions and decisions by the board;
- organise meetings with health and safety experts to ensure that the organisation is ensuring employees are safe, and that safety in the work environment is given high priority.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

Trustees will need to review the state of their physical workspaces to ensure they are capable of being altered to support COVID-19 social distancing working practices. Open spaces may also be considered suitable for certain aspects of the charity's activities, dependent on the weather and activity under consideration.

Where the charity rents or leases office space, it is likely that frequent communication will flow between the property-owner and the charity to agree what measures the landlord will be putting in place and the expectations it has of renters as the lockdown is eased. Re-start plans affecting the use of rented or leased property are likely to be shared with owners, even if only an edited version covering the major risks to the owner.

For the benefit of clients, staff, volunteers and trustees, sound and effective governance should not be diminished or diluted at this time. Should the worst happen, the trustees and the charity will depend on an audit trail of their decisions, actions and rationale behind each to demonstrate that they acted in good faith, exercising due care and skill.

In some instances, the charity may have purchased trustee indemnity insurance. Section 189 of the Charities Act 2011 permits trustees to purchase liability insurance out of charity funds without prior permission from the Charity Commission if the trustees decide it is in the best interests of the charity,<sup>21</sup> unless the governing document expressly prohibits it.

Careful reading of the 'small print' and clauses will be required to assess whether liabilities arising from pandemics are covered.

Trustee indemnity insurance may offer only limited protection, especially if the trustee acted wrongly or with disregard for the consequences of their actions.<sup>22</sup>

It must be remembered that trustees, company directors, the charity secretary/governance professional, and members of the senior management team can apply to the Charity Commission<sup>23</sup> and the courts for relief from personal liability if they can prove that they acted prudently, reasonably and honestly when undertaking their duties.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 4. Safety first

The changes in working practices developed in response to the lockdown will not entirely disappear – either because they present a better way for organisations to achieve their goals, or because social distancing will be in force for some time or subject to relaxation and tightening in reaction to local and regional outbreaks.

Trustees should not think of lockdown measures in a binary way, but consider the spectrum approach where different aspects of safe working can be imposed and eased to different levels and may vary according to geographic areas depending on fluctuations in the prevalence of COVID-19.

The current lack of clarity around the potential liability of employers who invite staff back to work will mean that trustees should be seen to have done the right things at the right time. In practice, this is likely to mean that meeting government guidance, as a minimum, to ensure the safety and well-being of staff, volunteers, clients and others, will be of paramount importance.

### 4.1 Assessing the risk of re-opening

The government's guidance on working safely provides details of the risk assessments employers must undertake, and offers suggestions designed to help employers with implementing social distancing and maintaining high standards of hygiene. The risk assessment poses several questions:

- Who is needed on site?
- What is the minimum number of staff required to be on site for operations to be safe?
- What on-site equipment needs to have a maintenance check before staff arrive (water tanks, heating, air conditioning units, etc.)?
- What mechanisms are currently, and could be put, in place to monitor the health and well-being of all staff, both on site and working remotely?
- What equipment needs to be provided to staff to enable them to perform their duties safely?
- Do you know which individuals need to be shielded due to underlying health and other conditions?

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

As the situation changes; because of a local lockdown or a decision to open up more widely, the risk assessment will need to be undertaken again and the associated policies and procedures updated accordingly.

For trustees and senior managers, working practices will need to cover physical arrangements, and the policies and procedures in place to manage and monitor work.

The following list frames a few questions that trustees and senior managers might want to consider when trying to formulate the best way to slowly and carefully re-start the charity after lockdown. The list is not exhaustive, and nor (deliberately) does it cover the ongoing issues around finances and governance.

## Physical issues:

1. Can your physical office space support colleagues working two metres apart (including workstations and social areas such as kitchens and canteens)? Can one metre distancing be implemented with additional measures to a satisfactory safety level? Can office space be reconfigured to accommodate social distancing? Is there outside space that could be utilised for some activities?
2. Is there a need to introduce physical changes to the flow and operation of office space? And within that:
  - Does a particular space or piece of equipment need to be subject to pre-booking with additional cleaning/sanitisation between use?
  - Does a one-way system need to be introduced to ensure social distancing in busy access areas?
  - Do markers need to be placed on carpets and walkways to help identify the two-metre or one-metre distancing?
  - Will extra signage be required?
  - Can hand sanitiser stations be put in place, such as in transition areas between one work area and another? Is it possible to install more handwashing areas?
  - Are there specific activities which require staff to have some level of PPE, provided by the charity?
  - Is there a need for physical barriers to be installed, such as plastic screens between workstations? Or to ensure that staff work back-to-back rather than face-to-face?

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- What additional cleaning will be required, and will rooms that have been deep cleaned be subject to a red/green system (red = cleaning required and do not use the room, green = room cleaned and ready for use)? How will rubbish be disposed of safely?
  - Can travel to and from the office be staggered to avoid rush hours on public transport? Are there other transport options the charity could support to help staff and volunteers?
  - Can staff be on-site on a rota or 'buddying' system, thereby keeping a minimum number of people in buildings and minimising contact? Likewise, can the charity be flexible about when people start and finish their working day – both at home and in the office?
3. Can a 'clear desk' policy be introduced to ease cleaning (removing pens and other stationery in order to avoid contamination)? Are there any areas in which staff could store their personal belongings safely?
  4. Should all staff be required to bring their own food and drink, including receptacles, to avoid the transfer of the virus and any other germs by multiple use of the same mug or plate, even if put through a dishwasher between use? Can antibacterial wipes be made available to wipe down common use items (kettles, fridge doors, milk, taps, etc.) between use? Could communal use equipment be removed in the short to medium term (such as kettles, coffee machines, etc.)?
  5. What digital and virtual practices adopted during lockdown could be continued to support staff and clients?
  6. What physical and mental health measures will be in place to support colleagues?

## Policies and procedures:

7. Do existing policies and procedures reflect the changing work practices? This may include:
  - health and safety practices, including additional protections for BAME, pregnant and clinically vulnerable members of staff, volunteers and clients
  - sickness policies
  - childcare and caring responsibilities and practices

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- safe working protocols
  - safeguarding requirements
  - data protection policies, including the use of information required for 'Test and Trace' and use of personal devices
  - digital security – for both documents and virtual meetings, fraud prevention and cybersecurity for homeworkers
  - risk management policies
  - hot desking arrangements
  - bereavement leave
  - annual leave and holiday use
  - processes for unwinding the use of the furlough scheme and reintroducing staff
  - arrangements for visitors, including the need to note and retain details of visitors for 21 days (for the purposes of contacting later should a local resurgence of the virus occur), reflecting data protection practices and notices
8. Can the site accommodate an isolation area for individuals who may become ill during the working day? Is there a plan for dealing with such incidences? Have first aiders been given specific guidance for dealing with suspected COVID-19 cases in the workplace?
9. Are existing regulatory and oversight mechanisms fit for purpose in these changed ways of working? For instance:
- Would the board know if a serious incident has occurred and when and how to inform the Charity Commission?
  - Do trustees know what signs to look for to avoid fraudulent trading/trading while insolvent?
  - With an increased use of digital media, is the board assured that data protection requirements are still being complied with?

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- When and how will health and safety breaches be presented to the board?
  - How will the board know when local lockdown measures are planned due to a local or regional spike in incidences?
10. Have risk registers been updated to reflect the new challenges (and opportunities)?
11. Are proposed actions for re-opening physical spaces in alignment with official guidance, as a minimum? Where is the assurance to support those opinions? If reversion to lockdown is required, is there an agreed process that builds on previous experiences?

## 4.2 Risk assessment template

Working safely guidance during coronavirus (COVID-19)<sup>24</sup> states that all organisations should undertake a risk assessment before re-opening physical spaces and activities. The Health and Safety Executive has a number of COVID-19 resources available on its website, including links to risk assessment templates.<sup>25</sup> Where a charity employs over 50 staff, that completed risk assessment should be published on the website.

The following provides an example of how a charity's completed risk assessment might look

<b>What is the hazard/risk?</b>	COVID-19/Coronavirus
<b>Risk assessor</b>	J Smith
<b>Date of assessment</b>	20/06/2020
<b>Site/location assessed</b>	Charity HQ

## COVID-19 lockdown: what trustees need to know and do

Who is at risk?	Controls required	Additional controls?	By whom	When	Signed off
employees volunteers clients members of the public visitors	<ul style="list-style-type: none"> <li>• hand washing</li> <li>- hand washing facilities with soap and water in place</li> <li>- stringent hand washing taking place</li> <li>- hand washing guidance</li> <li>- use of disposable paper towels</li> <li>- regular emptying of wastepaper towel bins</li> <li>- alcohol sanitisers in any area where washing facilities not readily available</li> </ul>	<ul style="list-style-type: none"> <li>- reminders of 20 second handwashing with water and soap and the importance of proper drying with disposable towels</li> <li>- coughs and sneezes reminders: catch it, bin it, kill it</li> <li>- avoid touching face, eyes, nose or mouth</li> <li>- tissues will be made available throughout the workplace</li> </ul>			
contractors/suppliers pregnant women children and young people clinically vulnerable persons extremely vulnerable persons	<ul style="list-style-type: none"> <li>• cleaning</li> <li>- frequent cleaning/ disinfecting of objects/surfaces, especially high traffic areas/items</li> <li>• social distancing</li> <li>- enforcing 2m/1m distancing via physical changes and reframing behaviours</li> <li>- review of work patterns</li> <li>- shift/cohort working</li> <li>- working from home</li> <li>- revised working practices: remote meetings, outside spaces, rest, social areas</li> </ul>	<ul style="list-style-type: none"> <li>- frequent and robust checks by xx</li> <li>- staff to be reminded of the importance of social distancing both in the workplace and outside of it</li> <li>- peer monitoring and reinforcement</li> </ul>			

## COVID-19 lockdown: what trustees need to know and do

Who is at risk?	Controls required	Additional controls?	By whom	When	Signed off
	<ul style="list-style-type: none"> <li>• use of gloves               <ul style="list-style-type: none"> <li>- supply of gloves, where identified as required to perform task safely</li> <li>- staff training on glove use, removal and disposal</li> </ul> </li>   <li>• face masks               <ul style="list-style-type: none"> <li>- supply face masks, where identified as required to perform task safely</li> <li>- staff training on face mask use, removal and disposal</li> <li>- outline approach to personal use of face masks outside of areas identified in the risk assessment</li> </ul> </li>   <li>• symptoms of covid-19               <ul style="list-style-type: none"> <li>- awareness of symptoms</li> <li>- first aiders guidance</li> <li>- updated sickness policies and procedures</li> <li>- designated isolation room</li> </ul> </li>   <li>• mental health               <ul style="list-style-type: none"> <li>- updated health and wellbeing policies and protocols</li> <li>- promoted social interactions – at 2m or via videoconferencing</li> <li>- regular line manager 'check ins' with staff</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- reminders that wearing of gloves does not eliminate need for high hygiene standards</li>   <li>- reinforce the importance of social distancing wherever possible</li> <li>- limit 2m infractions to 15 minutes, where possible</li>   <li>- contact protocols for contact tracing</li>   <li>- designated 'wobble room'</li> </ul>			

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

Some organisations may wish to combine their risk assessment with a risk matrix to identify the level of risk associated with each specific activity identified.

## **4.3 Staff consultation framework**

Formal staff consultation is an important part of any change management process, including the re-opening of offices and other spaces as a result of the easing of lockdown measures. Such consultations should be done as early as possible to facilitate positive discussions. They should be balanced with the need to handle sensitive matters in an appropriate manner so as to promote confidence and avoid any undue loss of morale or support for the re-opening proposals. Under government guidelines, it will also be necessary for consultations to be carried out with the relevant trade union if the workforce is unionized, or with a staff member nominated by colleagues.

Information given to staff and volunteers should be of a standard that allows them to understand the importance of the proposals and the impact of measures on the way they work. This process needs to be undertaken in an appropriate and timely manner, as any negative actions by the staff or volunteers could undermine the whole process of re-opening and endanger its long-term success in protecting staff, volunteers, clients and others who come into contact with the charity.

Involving staff, clients and volunteers in discussions about the way forward and plans to re-open physical spaces will contribute to ensuring success – not to mention that it is a requirement of government guidance. Having a clear idea as to the approach that should be taken, and what subsequent actions will look like, should help to focus people's energy and thinking and ensure a more effective implementation.

## **4.4 Re-opening checklist**

The following list provides an overview of the things trustees and senior managers may want to consider when reviewing their proposals for re-opening physical sites and activities. It does not cover health and safety issues (covered elsewhere) and is not exhaustive but should provide a prompt for boards to consider major aspects of their activities.

- governance matters
  - governing documents – powers relating to virtual meetings (AGMs); delegated authority; chair's actions; emergency and urgent decisions

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- contracts and service level agreements – ability to change the way services and activities are delivered, time frames and other operational constraints;
- Updates and guidance from regulators – serious incident reports; annual returns, AGMs, insolvency changes
- risk registers and risk management strategy
  
- insurance documents
  - description of all insurance policies, such as: public liability insurance; employer’s liability insurance; building insurance; trustee indemnity insurance (where appropriate); and fidelity insurance (insurance against losses incurred by employee dishonesty)
  
- personnel matters
  - identification of those who need additional shielding and protective measures (BAME, pregnant women, underlying health conditions, age)
  - personnel policies, including staff handbook – changes to reflect new working practices and whistleblowing/speak up policies
  - employee expectations – what, if any, level of PPE will be provided by the charity, guidelines on expected behaviours and use of communal equipment
  - volunteer policies and practices – clear expectations of conduct and behaviour, the charity’s commitment to protect volunteers and clients, updated guidance on how physical meetings will be conducted, on site or in client homes
  
- finance and funding
  - annual reports – SORP statement on COVID-19 and other relevant guidance
  - cash flow statements and forecasts – updated and circulated regularly to maintain vigilance on insolvency and fraudulent trading; revise financial forecasts
  - investment portfolio – review of investment strategy and levels of funds invested, review statement of investment principles
  - reserves policy – review and update, change to free-up reserves for dealing with present day financial issues
  - description of all funding arrangements – contract and grant conditions; analysis of fundraising activities and trends such as major campaigns, legacies, etc; revise income generation strategy

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 4.5 Action group

When starting to think about how best to re-open, it might be appropriate to develop an ad hoc group to investigate the best way forward and the actions required to minimise risks to those who may come into contact with the charity. A simple process could incorporate the following aspects.

1. Identifying those factors which need to be in place for safely re-introducing core activities in a way that is safe for employees, clients and volunteers. This may take the form of a re-start working group with a brief along the following lines:
  - Gather information and expertise to inform the necessary activities that should be introduced – immediately, in the medium term and longer term.
  - Be prepared to consult widely and to change the membership of the group in order to have the right mix of people, insights and skills at the right time. Gather insights from every aspect of your charity's activities and operational locations.
  - Assess the performance of digital practices taken up during the lockdown with a view to adopting the most effective as part of the new way of working and establish which of them could be incorporated for the longer term into the organisation's ways of working.
  - Identify the physical changes to buildings and offices required for safe working.
  - Articulate the behaviours that should be promoted to ensure the safe and successful return to physical spaces. These could include, for example, entrance/exit signage routes, logistics for different sites, the use of charity-provided masks and gloves, hygiene and health procedures, the establishment of rules for travel to physical sites and clients, and use of contact numbers. These will need to reflect revised organisational policies discussed above.
2. Putting in place arrangements for the safety and protection of staff, volunteers, clients and visitors, including:
  - Identify and implement the measures required to protect all types of people visiting or otherwise making use of the charity's physical spaces (see risk-assessment section above).

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- Put in place additional medical and well-being support packages for staff and visitors, such as records of all visitors, rules on restricted movement in busier areas (such as kitchens and toilets), dedicated activity areas, temperature checks before entering areas, requirements for the use of gloves and face masks, additional or deeper cleaning regimes, and the introduction of so-called ‘wobble rooms’ or counselling services for staff in distress, among others.
- Investigate and implement the use of technical developments, such as downloading the government app, that could support the ability of staff, volunteers and clients to monitor their likely exposure to individuals with COVID-19 symptoms.

### 3. Engaging with stakeholders:

- Communicate to all stakeholders the actions taken to re-open physical spaces safely and in a range of ways that meet the needs of your different stakeholder groups – Twitter, e-mails, video or telephone calls, letters, webcasts, etc.
- Where an individual physically needs to attend the charity’s offices, or to have a member of staff or volunteer meet a client in their home, produce an information sheet explaining what the client or visitor needs to do to protect themselves and the staff member or volunteer, and what they can expect of the person visiting. Be clear as to what to do if either party does not feel safe.
- Share your experiences with other organisations. Learn from the success of others and willingly share your knowledge to benefit others.

## 4.6 Communications

As in any time of crisis, communication will be key to the success of any actions that promise to introduce new ways of working. Staff, volunteers and clients alike will be fearful of their ongoing COVID-19 risk, and some will require additional assurance that their health and well-being is of the utmost importance to trustees and senior managers. The tone of internal and external communications around returning to work needs to be finely judged, with due consideration given to the uncertainty some staff may feel from having been furloughed – and their apprehensions about what lies ahead.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 4.7 Test and change

When considering re-opening physical sites and activities of the charity, trustees will need to undertake an assessment of the risks posed. The government has stated that employers must consult with staff on re-opening sites (see previous section), so trustees will therefore need to demonstrate due diligence in assessing the risk factors and mitigating actions required to protect all those that come into contact with the charity.

The sections above suggest ways in which trustees can assure themselves that re-opening physical sites will be as safe and supportive as possible for staff, volunteers, clients and others. However, there can also be a moral angle to deciding whether the plans in place are as good as could be expected given the specific circumstances of the charity. Trustees might therefore wish to reflect on the following questions before making the final decision to re-open:

- Do the operational proposals and plans for re-opening physical sites and re-starting physical activities meet government minimum standards? In what ways do the proposed measures exceed the minimum in order to protect staff, volunteers, clients and third parties? Are the measures reasonable and proportionate to the circumstances?
- What level and sources of assurance do we need, and have access to, to ensure re-opening proposals are as comprehensive as possible?
- Are the time and resources required to make the proposals successful a viable proposition or should the trustees consider closing the charity permanently in an orderly fashion?
- Would I be willing to work in this environment or access the charity's services with the proposed processes and actions in place? If not, what else needs to be done? Or what needs to change more widely in society before revisiting the decision?

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 5. Reasonable decision making

To cope with the changing situation, it may be that trustees have amended their standing orders, bye-laws, schemes of delegation, or terms of reference; for instance to permit videoconferencing or to provide the executive team with greater flexibility to take action at short notice. As these aspects of the governance architecture are usually supplemental to the governing document and represent the internal administration of a charity, it should not be unduly difficult to amend them to provide greater resilience to meet the demands of the course of the pandemic.

If you have changed, or are considering changing these documents, ensure any changes are completed in accordance with the governing document and relevant legislation. Remember, 'regulated alterations' still require Charity Commission approval. However, the governance framework should be a business enabler and therefore if anything is preventing the trustees from making timely decisions, action should be taken to remedy the situation, where possible.

In such an ever-changing situation as this, it will not be possible for trustees to be in possession of all the facts before making a decision. The fundamentals of gathering as much relevant information as practicable, exercising due care and skill, accessing expert advice, taking decisions in the best interests of the charitable purposes and acting in good faith should not be underestimated. They should be augmented with valid meetings, clear decisions and accurate records. Ultimately, these factors could be crucial in any review of the charity's actions.

### 5.1 Valid meetings

Given the rules around social distancing, it may be some time before a physical trustee meeting can take place. Ensuring the validity of remote meetings will therefore be of paramount importance to ensure decisions are made legally. The Corporate Governance and Insolvency Act 2020 offers some flexibility to charitable companies and charitable incorporated organisations with regards to meetings, and as mentioned previously the Commission is being pragmatic in its regulatory approach.

It is not currently possible for traditional physical board meetings to take place. Charities will therefore have been using technological solutions to host remote or virtual meetings.

There are some technical issues regarding the validity of such meetings, dependent upon the structure of the charity and its governing document. The Charity Commission's CC48 guidance<sup>26</sup> provides detailed information about trustee meetings. It states

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

‘Charity trustees may choose to conduct some trustee meetings by electronic means, unless the governing document specifically prohibits it, and provided that the means used allows them to both see and hear each other, for example, by using video conferencing or internet video facilities.’

The legal definition of a ‘meeting’ is generally viewed as being valid if people ‘can both see and hear each other’ (*Byng v London Life Association* (1989) 1 All ER 560). This definition will apply where a charity’s governing document gives no other definition of a meeting. Videoconferencing will therefore be the only option available for remote meetings, unless the governing document provides otherwise.

Where there is no such provision for trustee meetings to be held in this way, it will be advisable to ratify decisions at the first physical meeting held. As detailed previously, the Commission has signalled a flexible and pragmatic approach to charity governance matters. The following sections provide more useful suggestions.

Where a charity moves to remote or virtual meetings, it is the expectation of the Charity Commission that a trustee board will meet physically at least once a year. Hopefully, for those charity boards that have yet to meet, a physical meeting will be possible before the end of the year.

The usual governance arrangements for the process of meetings should be observed, although the chair may wish to introduce new measures to ensure everyone contributes and the meeting is conducted in an orderly manner. As more frequent but shorter trustee meetings may become the norm for a while, there are a few tips that might be beneficial to ensuring meetings are successful.

## 1. Focus on what’s urgent

Good governance often comes down to common sense and this should be taken into consideration.

The Institute urges trustee boards to be pragmatic in what they cover in board meetings in this time of lockdown. Boards should prioritise the key decisions that support their charity and its leaders, and be proportionate in the decisions that they are planning on taking.

Deferring some decisions may be a reasonable approach for trustees to take, focusing board meetings on those issues that are urgent and business-critical. Trustees are still accountable for the charity and the oversight of the management team, so producing a lean agenda which concentrates on those items that require the board to make a

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

decision or approve an action should maximise use of limited time and resources. A lean agenda is likely to include issues regarding the safety and wellbeing of individuals who depend on the charity (clients, staff and volunteers), financial considerations (including fundraising activities, grant/contract conditions, and cash flow) and urgent governance considerations.

Take the opportunity to review your approach to board packs and remove any extraneous 'for information' or 'to note' items, which could be circulated by email at a more appropriate time. This frees up time to concentrate on what matters.

As the situation and information continues to be fluid, trustees may decide to meet more frequently to focus on a smaller number of urgent issues. Proper records of all meetings should be maintained.

## 2. Urgent decisions

Given modern communication methods it should be possible for charities to use virtual or remote meetings to take swift action. For charitable companies, a unanimous decision made by email (a written resolution) will be valid, even if the articles don't explicitly permit it.<sup>27</sup>

## 3. Delegations, including chair's actions

If the board decides to delegate authority to the SMT or the chair, it should be aware of those things it may not delegate and put in writing and formally agree those that are to be delegated. These should be monitored and reviewed regularly.

It should be noted that 'chair's actions' can only be taken where there are provisions for this in the governing document (or standing orders), which could take the form of power to delegate to an individual (such as the chair or a lead trustee).<sup>28</sup>

Urgent actions not taken by the board collectively are likely to be subject to ratification at the next legally constituted board meeting.

## 4. Ratify later

Where delegations are made to an individual, in accordance with a formally agreed policy or schedule, it will be essential for trustee boards to ratify decisions at a later date.

Even where a trustee meeting may not technically be valid, the decisions made at it could be ratified later when the usual meeting format can be re-introduced and the meeting deemed correctly constituted.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 5. Change the governing document to permit remote or virtual meetings

Depending on the charity, it might be possible to amend the governing document in order to permit the use of electronic methods for trustee meetings.

As the change probably represents an internal administrative amendment there is no need to seek external approval from the regulator. However, the amended documents should be registered with the Charity Commission and Companies House (and OSCR and other regulators) where appropriate.

It is for the trustees to decide whether the administrative arrangements present an obstacle that is best removed or worked around for the time being. If action is required, the trustees should follow the process set out in their governing document for making internal administrative changes.

## 6. Keep records

Any decisions taken in good faith during this crisis are unlikely to be challenged now but may be subject to additional scrutiny in the future.

Hence it is essential that proper records of meetings, decisions made and supporting arguments are kept. Now is not the time to take short cuts to this essential aspect of governance. It will save time and energy later, should anyone question a decision of the board and the subsequent actions.

### 5.2 Better papers

With more frequent trustee meetings, and official guidance on the lockdown changing, it is unlikely that the SMT has the required time to produce board packs in the usual depth and timeframe. This might therefore be an opportune time to review the format of board papers to aid swifter decision making.<sup>29</sup>

Trustees should still be given enough time to read papers ahead of a meeting, and be given enough detail to inform and shape considered and comprehensive discussion and decision making. However, papers could be more succinct and clearer as to what the board is being asked, with supporting information about the potential associated risks. A standard cover sheet could help frame the board paper and identify the key issues the trustees must consider.<sup>30</sup> Such cover sheets can include:

- title, author, and date of the report;

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

- clear proposal and summary outline of key issues in the report;
- purpose of the report, e.g. for decision, information, approval, etc. Items for information could be circulated outside trustee meetings in order to focus on business critical issues during the pandemic;
- identifying the implications of accepting the proposal or not in terms of finance, governance, regulation, legal compliance, risk and staffing; and
- which strategic goals it supports, or how it links into any assurance framework or standards.

Even in the best of times, there can be occasions where trustees need more information to assure themselves that actions are implemented and are having the anticipated outcome. While trustees are likely to have been more involved in some aspects of a charity's operations during the crisis, they will still require the SMT to provide assurance that the charity is operating as well as intended.

Assurance generally means independent and validated (internally or externally) evidence. Assurance within the boardroom requires trustees to be given evidence that decisions are being implemented and strategic aims are having the intended outcome. Reassurance, conversely, is the act of confirming someone's opinion or impression and restoring confidence. It is therefore important that trustees get assurance rather than reassurance when discharging their legal duties, especially at these difficult times.

The board will need to answer a number of questions to inform the degree of assurance required for each activity identified within the proposal to re-open physical activities and buildings, including:

- Where does the assurance come from, i.e. is it internal/external/independent?
- Is there assurance from more than one source?
- Is the information, and the assurance it seeks to offer, relevant, timely, accurate and reliable? How do we know?
- Is the level of assurance proportionate for the size and complexity of the charity and the risks it faces in achieving its charitable objects safely?

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 5.3 Reasonable decision-making framework

General principles of decision making reflect the legal issues relating to the governance and leadership of a charity, including the requirements that trustees must:

- act within their powers;
- make decisions, and act, in the best interests of the charity, its current and future beneficiaries;
- be appropriately informed of all relevant factors relating to a proposal under discussion;
- not be swayed by personal interests or factors that are irrelevant; and
- be able to defend their decisions in terms of their legal duties and powers.

These principles are even more relevant at this difficult time. In addition, trustees should make decisions in a way that meets the requirements of charity law and other relevant legislation and the charity's governing document, including:

- constitutional directions regarding conduct of meetings and decision making;
- collective responsibility;
- respecting the conditions attached to the use of delegated powers, including the monitoring of the use of such powers; and
- recording decisions.

All trustees are collectively responsible for the decisions and governance of the charity. This does not mean that all trustees have to agree on every matter on which they make a decision, but all trustees have a duty to actively participate in the decision-making process.<sup>31</sup>

Each trustee should be aware of, and understand, their individual and collective responsibilities, and should not be overly reliant on one or more individual trustee(s) in any particular aspect of the governance of the charity. For example, all trustees should be able to read the financial accounts and be able to form an opinion as to the ongoing viability of the charity.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## 5.4 Record and retain

Whatever decision the board makes, there should be a formal record of the evidence and rationale on which any decision made was based. Minutes are produced to provide an accurate record of business transacted at the trustee board or committee meeting, decisions made and actions to be implemented. There are legal requirements that must be followed for the production and retention of minutes.<sup>32</sup>

The minutes of meetings should record the decisions taken and provide sufficient background to those decisions. All papers presented at the meeting should be clearly identified in the minutes and retained for reference.<sup>33</sup>

- Minutes provide evidence of decisions taken. Trustees can be legally bound by a decision recorded in the minutes, which they had confirmed as accurate.
- Minutes should be brief, but authoritative.
- Minutes should provide sufficient information so that someone who was not at the meeting can read them and ascertain why certain decisions were made.<sup>34</sup>
- Minutes should be retained for a minimum of 10 years, in line with legal requirements.

## 5.5 Review and revise

These are unprecedented times, and the situation is stressful for all. Where individuals such as trustees are responsible and accountable for the health and welfare of others, those stresses can be more acutely felt.

As detailed above, trustees should be performing their duties in line with legal requirements, using their skills, experience and knowledge, seeking specialist advice when required, acting in the best interests of the charity and its stakeholders, being reasonable and acting in good faith.

It is natural that some mistakes will be made. It is fundamental that trustees review those mistakes dispassionately and learn from them for the benefit of the charity, staff, volunteers and clients. Good governance will enable trustees to undertake their responsibilities in the most appropriate manner possible in order to support the fulfilment of the charitable objects in a safe and effective manner.

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

## Notes

1. See, for example, the Charity Governance Code, Key Outcome 4.1.
2. <https://www.gov.uk/coronavirus>
3. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884760/Our\\_plan\\_to\\_rebuild\\_The\\_UK\\_Government\\_s\\_COVID-19\\_recovery\\_strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884760/Our_plan_to_rebuild_The_UK_Government_s_COVID-19_recovery_strategy.pdf)
4. <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>  
Specific guidance for schools can be found at <https://www.gov.uk/government/publications/actions-for-schools-during-the-coronavirus-outbreak/guidance-for-full-opening-schools>, and FE colleges at <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-further-education-provision/maintaining-education-and-skills-training-provision-further-education-providers>
5. <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities> and <https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing>.
6. <https://www.gov.uk/guidance/coronavirus-covid-19-safer-travel-guidance-for-passengers#travel-safely-during-the-coronavirus-outbreak>
7. <https://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-the-charity-sector>
8. <https://www.gov.uk/government/news/coronavirus-covid-19-increased-risk-of-fraud-and-cybercrime-against-charities>. The full range of COVID-19 related guidance can be found at <https://www.gov.uk/government/organisations/charity-commission>.
9. Their briefing can be found at <https://www.charityscorp.org/media/648486/sorp-covid-19.pdf>.
10. <https://www.frc.org.uk/news/april-2016/guidance-on-the-going-concern-basis-of-accounting>.
11. <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>
12. <https://www.hse.gov.uk/coronavirus/riddor/index.htm#:~:text=You%20should%20only%20make%20a,of%20the%20following%20circumstances%20applies%3A&text=This%20must%20be%20reported%20as,as%20a%20case%20of%20disease>
13. <https://www.hse.gov.uk/index.htm>
14. <https://www.icsa.org.uk/knowledge/resources/charity-trustee-liability-england-wales>
15. Section 191 of the Charities Act 2011 provides the Charity Commission with the power to relieve trustees from any personal liability resulting out of a breach of trust or duty, where the trustee has acted honestly and prudently.
16. In May 2013, the Charity Commission updated its policy regarding the claw-back of charitable funds lost as a result of negligence or misconduct. See [www.gov.uk/government/publications/restitution-and-recovery-of-charitable-funds-charity-commission-policy](http://www.gov.uk/government/publications/restitution-and-recovery-of-charitable-funds-charity-commission-policy)
17. For further information refer to the Charity Commission's publication CC12 Managing a charity's finances: planning, managing difficulties and insolvency, June 2010, updated January 2016.
18. Crowe's Charities and insolvency, March 2020, provides more detail on the subject - <https://www.crowe.com/uk/croweuk/-/media/Crowe/Firms/Europe/uk/CroweUK/PDF-publications/Charities-and-insolvency-updated-March-2020-v4.pdf?modified=00010101000000&la=en-GB&hash=411F07FAB4056BA16DF9A62ADC38712865CF2D20>

# COVID-19 Re-opening safely: A guide for charity trustees in England and Wales

19. A detailed briefing can be found at <https://www.lexology.com/library/detail.aspx?g=1a799972-07b6-4fc6-a1aa-7f0def8d518d>
20. The Chartered Governance Institute's guidance on trustee liability provides more detail on the different risks presented by the various charity structures.
21. This is not the case in Scotland.
22. More detailed information can be found in the Charity Commission's publication CC49 Charities and Insurance.
23. Section 191 of the Charities Act 2011 provides the Charity Commission with the power to relieve trustees from any personal liability resulting out of a breach of trust or duty, where the trustee has acted honestly and prudently.
24. <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/5-steps-to-working-safely>
25. <https://www.hse.gov.uk/simple-health-safety/risk/index.htm>
26. <https://www.gov.uk/government/publications/charities-and-meetings-cc48/charities-and-meetings#the-definition-and-forms-of-a-meeting>
27. Further guidance on the use of electronic communications for charities can be found at <https://bateswells.co.uk/wp-content/uploads/2019/06/cuaut13-email-governance-pdf.pdf>.
28. The Institute has specific guidance on matters reserved to the boards, and the role of lead trustees on the charity resource pages of the website.
29. Further information on board packs can be found in the guidance jointly produced by The Chartered Governance Institute and Board Intelligence
30. The guidance note Specimen cover sheet for charity board meetings can be found on the Chartered Governance Institute website
31. Further information regarding collective decision making can be found in the Charity Commission's guidance CC27 It's your decision: charity trustees and decision making which can be downloaded from the Charity Commission website
32. For further information refer to The Law and Practice of Company Meetings, ICSA Publishing, July 2013.
33. See the ICSA guidance note Minute taking for further information.
34. For further information please refer to Effective Minute Taking, ICSA Publishing, June 2018 and the ICSA guidance note Minute taking.