

This resource is to support governing bodies of museum and heritage organisations, who also hold a charitable status, and the key considerations to make in response to COVID-19.

*(Please note: This document should not be used as a substitute for legal advice. This is not an exhaustive list, you may find that there are other considerations, particular to your organisation, that need to be addressed.)*

The content is based on a webinar held by NCVO and Bates Wells Solicitors on 25<sup>th</sup> March 2020 and has been compiled by Vicky Dawson, Technical Accreditation Advisor for South West Museum Development.

Charity Governance: guidance during a crisis		
1. Be clear about your constitution and governance structure		
Incorporated	Charitable Companies limited by Guarantee	A “corporate” entity is a legal ‘person’ and has its own debts and liabilities. Directors or trustees will not be personally liable for the debts unless they behave without due diligence.
	Charitable Incorporated Organisation (CIO)	
Unincorporated	Unincorporated Charitable Association	Unincorporated charities are not legal persons and so the debts of the charity are the debts of the people who incurred them – the trustees. If there is not enough money in the charity to pay the debts, the trustees may be personally liable.
	Unincorporated Charitable Trust	

2. Check your constitution to see what it says about the following:	
Insolvency/winding up	
Responsibility for delegated decisions	
Use of technology for holding meetings and making decisions	
Holding the AGM	
Retirement and appointment/election of trustees	

### Top tips:

While your organisation is <b>solvent</b>	If your organisation is <b>insolvent</b> (no. 4)
<ul style="list-style-type: none"> <li>Your duty is to act in the most considered way to help the organisation achieve it’s charitable purposes</li> <li>Act with reasonable care, skill and diligence - you are not expected to be perfect.</li> <li>Make informed decisions based on trusted information you can access. Document these decisions (minutes / diary etc.)</li> </ul>	<ul style="list-style-type: none"> <li>If your charity is insolvent then your duty will change. Instead of seeking to achieve your charitable purposes, your duty could switch to protecting the interests of creditors.</li> <li>Seek external advice (links at the bottom of this document)</li> </ul>

### 3. Check your insurance policy to see what it says about the following:

Business Interruption	
Trustee liability	
Property left vacant for a length of time	

### 4. Create a smaller 'Crisis Team' of trustees

Chair or Vice-Chair
Treasurer
Senior employee in terms of finance (if appropriate)
A representative of volunteers (if appropriate)
A representative of the friends group (if appropriate)
<b>Remit:</b> Stay informed about the current situation to prepare clear options, recommendations and reasoning to the Board in order to enable it to make decisions quickly and act with due diligence.

### 5. Is your charity solvent?

The Insolvency Act 1986 provides two tests for solvency:	<b>Test 1:</b> Cash flow test: Can the charity pay its debts as they fall due?
	<b>Test 2:</b> Balance sheet test: Is the value of the assets more than the value of the liabilities, taking into account contingent and prospective liabilities?
To determine if the charity is solvent or not you should develop a Crisis Plan. <b>Please refer to page 4 for details of how to do this.</b>	

### 6. Be prepared to hold Board meetings more frequently and remotely

Video (e.g. Skype, Zoom, Microsoft Teams)	For guidance on holding meetings remotely see: <a href="https://bateswells.co.uk/2020/03/charity-trustee-meetings-a-coronavirus-guide/">https://bateswells.co.uk/2020/03/charity-trustee-meetings-a-coronavirus-guide/</a>
Email	
Teleconferencing	

### 7. Minute meetings and keep all correspondence carefully

As well as minutes, keep a short diary each day reminding yourself of the decisions taken and the reasons why. You might find this very useful later.

## 8. Annual accounts and Trustees report

You can ask the Charity Commission if you can delay submitting your accounts and report for the last financial year if they haven't been approved by the Board yet.

You should consider this because the risks and uncertainties of the current situation make completing the accounts accurately will be a challenge.

Speak to your accountant/auditor. The Charities SORP (Statement of Recommended Practice) has also issued guidance <https://www.charitySORP.org/about-the-sorp/covid-19/>

## 9. Keeping people informed

Charity Commission	There is an obligation to report serious incidents to the Charity Commission. Insolvency and risk to beneficiaries will be reportable.
Your Accountant/Lawyer	They may be able to help you save the charity and save you from any personal liability.
South West Museum Development	Our team is here to help please contact us at <a href="mailto:museum.development@bristol.gov.uk">museum.development@bristol.gov.uk</a>
Your Volunteers and Members	They may bring extra capacity and skills; you will need them again when things get back to normal.

See page 4 for Crisis Plan Guidelines

## Crisis Plan Guidelines

Create a plan based on the best information you can put together and take into account the financial issues mentioned below. Your plan will change but it will help you to focus. Make sure you include milestones for anticipated decisions.

<b>Cash flow forecast</b>	Produce a cash flow forecast as soon as possible or review your existing one. This shows amounts and timings of anticipated inflows and outflows of cash and helps you work out if, and at what point, you may be insolvent on the cash flow test. Your cash flow forecast will almost certainly be wrong. Do it anyway and keep it under constant review as the assumptions in it change.
<b>Risk analysis</b>	Review your risk matrix and prepare a short risk analysis based only on the vital current issues. Keep it updated as circumstances change.
<b>Statement of affairs</b>	Prepare a statement of affairs. This will be similar to a balance sheet except that it will include any realisable assets which are not necessarily on the balance sheet (for example intellectual property), and any liabilities (including contingent and prospective ones) which may also not necessarily appear on the balance sheet.
<b>Income</b> Consider the following factors:	<p>Review all your funding streams, whatever their source. Will income be lost or just delayed?</p> <p>Keep in touch with grant funders – will they allow grant income to be used as general funds?</p> <p>Keep in touch with Commissioners and Service Level Agreement partners. They need to be made aware that you may be delivering services differently or are simply not able to deliver services. You may be able to renegotiate contracts.</p> <p>If funders or contract counterparties call for a return of funds, you will need to resist this. Take advice from your accountant/solicitor.</p> <p>Keep an eye out for more Government announcements on its financial rescue packages.</p> <p>Consider how you can take advantage of the Government's loan scheme to cover cash flow. Talk to your bank. Remember loans must be repaid.</p>
<b>Expenditure</b> Consider the following factors:	<p>Review all expenditure: what is essential and what is discretionary.</p> <p>Consider the Government's furlough scheme to meet the costs of staff who might otherwise be redundant. See: <a href="https://bateswells.co.uk/2020/03/coronavirus-job-retention-scheme-announced/">https://bateswells.co.uk/2020/03/coronavirus-job-retention-scheme-announced/</a></p> <p>Talk to creditors about having more time to pay.</p> <p>Talk to HMRC about having time to pay. Payment will need to be made.</p> <p>If you think your charity may be insolvent, take great care in paying creditors to ensure that you do not make unlawful preference payments (more information at <a href="https://bateswells.co.uk/charity-governance-and-solvency-a-coronavirus-guide/">https://bateswells.co.uk/charity-governance-and-solvency-a-coronavirus-guide/</a>)</p>

Crisis Plan Guidelines (cont.)		
<b>Using Assets</b>	<b>Reserves</b>	This is the time that you created them for. However, bear in mind that you may need them in order to wind up the charity solvently if all else fails.
	<b>Designated funds</b>	Designated funds can be undesignated and used for general purposes.
	<b>Restricted Funds</b>	Restricted funds can be used if the terms of the gift allow it but not otherwise. Charity Commission intervention may be needed if statutory methods of releasing restrictions are not available. You will need legal advice on this.
	<b>Separate trusts and permanent endowment</b>	For charities, some assets (and probably restricted funds) will be held on separate trusts and cannot be used for general purposes. Charities may also have “permanent endowment” assets that cannot be spent on the charity’s purposes; the capital must be retained. In some circumstances, permanent endowment restrictions can be released. Again, you will need legal advice on removing restrictions.

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