

Taking it personally: potential criminal liability of charity trustees

We have seen in our [July legal update](#) how charity trustees can potentially incur personal liability (so that their personal assets may be at risk) if they do not take care in their contractual dealings with other parties. In other scenarios there are instances where charity trustees could actually incur criminal liability while voluntarily carrying out activities for their charities. It would hopefully be a rare occurrence, and would be very harsh for a volunteer charity trustees, but it is a risk that is there, and a risk that should be managed.

It is important to be aware of the powers under s.37 Health & Safety at Work Act 1974. This provision allows for managers or significantly those holding themselves out to be perhaps more senior than they are to be prosecuted. Prosecution will follow if it is proven that a breach of health & safety regulations has been committed with the consent, connivance or neglect of a director or senior manager or anyone holding themselves out to be of such a position within the organisation. Conviction under this section allows the Court powers to imprison individuals for up to two years and also a power to disqualify directors.

In the voluntary sector, belts are tightening and staff and volunteers are being expected (and some would say encouraged by government policy) to get more involved at 'ground level' to make up the shortfall. It is possibly increasingly likely that volunteers (which may well include charity trustees) become involved in the day to day running or the protocol for the risk management of a charity. This can leave such individuals exposed to potential liability under health and safety regulations and beyond.

The Health & Safety Executive regularly publish details of successful prosecutions on its website. You never have to go too far to find examples of often well known charities who have fallen foul of health & safety legislation and sentenced to crippling hefty fines. In a recent browse of the prosecution's page a very well known charity was fined some £10,000 after an elderly client being transported in a bus died following an accident.

As we have seen, it is not just organisations that are at risk, but also potentially their employees and volunteers. In any event, however, following deaths in those circumstances, individuals in organisations may well find themselves being interviewed under caution either by the police or by Health & Safety Executive.

Although clients are often asked to attend on a voluntary basis and so not formally arrested, the prospect of being required to attend a police station for a recorded interview by police is still very unnerving. For most this will be very unfamiliar territory and something they could never have imagined happening to them. This is likely to be a time of anxiety and intimidation as it is the unknown experience with potentially serious consequences for all concerned.

Individuals should ensure that they are properly advised and represented from a very early stage, ideally sometime before such an interview is due to take place so any fears or concerns about the process can be allayed.

It is extremely important therefore that health & safety regulations are regularly reviewed at all levels within an organisation and that systems are updated and improved. Health &

Safety considerations should be a central theme at all levels of your organisation. If the worst happens and there is an investigation underway, the organisation should seek legal advice at a very early stage so that if at all possible matters can be dealt with in a way that reduces the prospects of a prosecution, and in particular also protects individuals that are involved in the activities that led to the investigation.

Russell-Cooke advises a number of charities all of whom are struggling with cuts in budgets or sometimes the loss of funding altogether.

Our team have experience in this field and are happy to answer any queries about the above or about other related issues.

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