

Looking back at 2024

24 December 2024

Charity trustees protected as whistle-blowers?

In *MacLennan v British Psychological Society (Protect and Charity Commission intervening)* [2024] EAT 166, the Employment Appeal Tribunal (EAT) has overturned a previous ruling by an employment tribunal concerning a charity trustee's eligibility to bring a whistleblowing claim under the Employment Rights Act 1996 (ERA 1996). The crux of the matter was whether the trustee, lacking a formal contract and thus not fitting the strict definition of a "worker" under the ERA 1996, could still claim protection under whistleblowing laws. The employment tribunal had initially determined that the trustee's status precluded him from such claims due to the absence of a contractual worker relationship. However, the EAT found this interpretation too narrow, particularly in light of the trustee's rights under the European Convention on Human Rights (ECHR), notably prohibition of discrimination combined freedom of expression. The tribunal's failure to adopt a "broad-brush" approach, overly focusing on the trustee's volunteer status and lack of remuneration, was criticized. The EAT highlighted that other factors, such as the role's nature, responsibilities, the potential awareness of wrongdoing, and the public interest in disclosures, should have been considered. It argued that the status of a charity trustee could be seen as akin to an occupational status, warranting protection. It remains to be seen what the Employment Tribunal will decide in this particular case on remission but charities should bear in mind that whistleblowing trustees benefit from legal protections which could lead to compensation claims.

Gift aid relief on charitable donations: Wider circumstances to be taken into account

In *Harvey and another v Revenue and Customs Commissioners* [2024] UKFTT 1098 (TC), the First-tier Tribunal (Tax Chamber) determined that payments made by Mr Harvey to a charity conditional on the charity acquiring property (loan repayments and interest) from a company connected to Mr Harvey constituted benefits associated with the gifts to the connected company and did not constitute "qualifying donations" under the Income Tax Act 2007, which would entitle him to claim higher rate tax relief and the charity to claim basic rate relief.

National Insurance increase for charities:

Despite lobbying efforts, charities will not be exempt from the employer National Insurance hike, impacting financial planning. For charities operating private schools, NI cost increases will come in addition to the application of VAT on school fees from 1 January 2025 and a loss of business rates charitable relief from 1 April 2025.

Charity Commission:

The Charity Commission continued its drive to update its guidance for trustees with some useful reminders on how to get the [foundations of governance right and other essential trustee information](#). We would invite trustees to take the refresher quiz and brush up on the fundamentals, which were all at the centre of the Charity Commission's most recent decisions and inquiries. For instance, serious failings were noted at:

- the Quba Trust, such as failure to comply with the charity's governing document, a serious disregard for, or lack of understanding of, the importance of proper financial management and controls within the charity; failure to evidence end use of charitable funds

transferred overseas; poor record keeping and payments to trustee personal and connected company accounts; late filings of annual accounting documentation; failures to comply with directions and orders of the Commission issued by the inquiry.

- the Captain Tom Foundation regarding the identification and management of conflicts of interest and/or loyalty as well as the prohibition on trustees retaining more than an incidental or duly authorised private benefit leading to the disqualification of two individuals to act as charity trustees for 10 and 8 years respectively.

The Charity Commission also remains focused on ensuring [compliance by local authorities acting as the sole trustees of charitable assets](#).

Chartered Institute of Fundraising & Rogare Fundraising Think Tank published a useful [overview of the Ethics of Gift Acceptance and Refusal](#) in light of the Charity Commission's revised guidance on [accepting, refusing and returning donations](#), published earlier in 2024.

Contents

[Charity law update: December 2024](#)



[Looking back at 2024](#)



[Looking ahead to 2025](#)



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