

STUDENTS' UNION BULLETIN

SPRING 2021

Welcome to the spring edition of Wrigleys' students' union bulletin

Welcome to the first edition of our brand new newsletter, aimed specifically at students' unions.

It contains links to the latest articles on our website which cover charity law issues affecting the students' union sector. It also contains 'save the dates' for two webinars we have coming up in May, which are aimed exclusively at the students' union sector.

Here at Wrigleys Solicitors, we support over 50 students' unions with their legal needs, advising on everything from governance and employment law to property, data protection and commercial arrangements. You can find more details about the services we offer, and our team members, on our website [here](#).

As a specialist charity law firm, we have lots of other resources on our website which will be of interest to students' unions, including articles and webinars on charity and employment law topics. We have included more details of these below.

We appreciate that students' unions, like all charities, are facing unprecedented challenges at the moment. If you have legal questions, please contact a member of our team to arrange an initial no-obligations call, by emailing Laura Moss at laura.moss@wrigleys.co.uk.

We hope you find this newsletter useful and please do pass it on to anyone you know who may be interested in it.

Forthcoming webinars:

- **13 April 2021**
Employment Brunch Briefing
TUPE Update
Speakers: Sue King, partner & Alacoque Marvin, solicitor at Wrigleys Solicitors
[Click here for more information or to book](#)
- **20 May 2021**
SAVE THE DATE: Students' Unions Webinar
Employment law update for students' union's
Speakers: Alacoque Marvin and Michel Crowther, solicitors at Wrigleys Solicitors
[Click here for more information or to book](#)
- **27 May 2021**
SAVE THE DATE: Students' Unions Webinar
Diversity and inclusion on students' union's boards
Speakers: Laura Moss, partner and Hayley Marsden, solicitor at Wrigleys Solicitors
[Click here for more information or to book](#)

Contents

1. Why should a students' union incorporate?
2. Knowing your DSARs from your elbow: Data Subject Access Requests
3. Overseas students identified as money laundering targets
4. Students' Unions – managing risk in the current climate
5. What are the Charity Commission filing obligations for my charity? Part 1:
The Annual Return
6. What are the Charity Commission filing obligations for my charity? Part 2:
The Annual Report
7. What are the Charity Commission filing obligations for my charity? Part 3:
The Annual Accounts

Why should a students' union incorporate?

Article published on 5 March 2021

Students' unions that want to incorporate this summer need to start the process now.

Many students' unions choose to incorporate as a separate legal entity, because it offers more protection from personal liability for trustees, as well as being administratively easier. If you have SUSS pension liabilities, the 2021 'window' in which you could incorporate without these being crystallised has now been announced, but the sooner you get started, the easier it will be to meet their deadlines.

There are many benefits to becoming an incorporated body. The key advantage is the establishment of a separate legal personality.

Having a separate legal personality means that the incorporated body can enter into contracts in its own name and hold its own assets and liabilities. This means that any liability taken on under such agreements is the liability of the organisation and not of the individuals. It is also administratively easier, because individual trustees are not signing contracts or holding assets in their own name, on behalf of the students' union.

It also means that, if the organisation runs into trouble, it is generally the charity itself which is on the hook, rather than individual trustees. The assets of individual trustees are therefore usually protected (see below for some limited exceptions to this).

The opposing position for an unincorporated body is that liabilities will be in the name of the individuals involved. This means that there is a personal risk taken on by an individual when becoming a trustee of an unincorporated body.

There are some exceptions to the limited liability offered by an incorporated structure, where the individual trustees could still be held personally liable, including if they give personal guarantees, if they breach their duties as trustees, or where the law requires personal responsibility (e.g. in relation to certain criminal, insolvency and environmental matters). However, incorporation gives the trustees much better protection than they have with the unincorporated charity.

A students' union often employs staff (sometimes significant numbers of staff) and may carry out activities which involve a certain amount of risk. In our experience, lay trustees are often particularly concerned about the risk to their own personal assets where a students' union is unincorporated. It can therefore be a barrier to recruiting new lay trustees.

What legal structure should your students' union take?

The most common incorporated legal structure that students' unions take is a charitable company limited by guarantee.

However, we are seeing increasing numbers of students' unions choosing to incorporate as charitable incorporated organisations ('CIOs'). The advantage of this structure is that it is only registered with the Charity Commission, rather than the Charity Commission and Companies House.

Whether you choose to incorporate as a charitable company or a CIO, a students' union will need to decide whether its legal members should be all students (an 'open membership' or 'associate' model) or should be limited to the trustees (a 'closed membership' or 'foundation' model). Where the only legal members are the trustees, students are still given democratic rights in the constitution, as required by the Education Act 1994.

We see far more students' union opt for the closed membership model, perhaps because it is administratively simpler to manage. For example, the legal requirement to keep a register of (legal) members is easier to fulfil where the only legal members are the trustees.

The NUS has model constitutions for both CIOs and charitable companies, for both open and closed membership models.

What are the SUSS deadlines for incorporating this year?

Many students' unions have significant pensions liabilities with SUSS, which would normally crystallise on incorporation. However, SUSS usually operates a mechanism to permit incorporation within a specified annual timeframe, which means that your incorporation would not be affected by those liabilities.

As at the date this article was published, we understand that SUSS specified window for incorporating your students' union in 2021 will open on 5 July 2021 and close on 1 October 2021. There are a number of steps to be taken in advance of the window opening, so we would recommend beginning this process as soon as possible if the intention is to incorporate in 2021. Please contact any member of the students' union team for an initial no-obligations call to talk through your options.

Knowing your DSARs from your elbow: Data Subject Access Requests

Article published on 3 August 2020

It's now over two years to the month since the biggest change in data protection law for a generation.

A great deal changed when the General Data Protection Regulation (GDPR) came into force, with many headlines written about the maximum fines (the greater of €20 million and 4% of turnover) which could be levied by data protection authorities (such as the UK's Information Commissioner's Office (ICO)) for failure to prevent data breaches. However, many of the changes were an evolution rather than a revolution of the old regime. One such example is the amendments which were made to the data subject access request (DSAR) regime.

Those people whose personal data students' unions process, known as data subjects, have long had a right to request a copy of the information that is held about them by their Students' Union (SU). This will include employees, officers, student members and others with whom the SU interacts. However, the GDPR increased data subjects' awareness of their rights under data protection law and made some tweaks to the DSAR regime which has resulted in increases in the number of DSARs submitted against organisations.

In light of this, and also given DSARs are notoriously time and resource consuming to manage, below we've set out a quick-fire Q&A to help SUs identify DSARs and some key pointers on how they might be managed.

What is a DSAR?

A DSAR is a request made by an individual to access the personal data an organisation, such as an SU, holds on them.

The request doesn't have to be identified as a DSAR and it doesn't even have to be in writing. DSARs are effective when sent to any member of an organisation, so it's important that everyone in the SU knows that data subjects have this right and who to contact if they think they've received a

DSAR.

Are there any preliminary steps we should take when we receive a DSAR?

One key step to be taken is to ensure the DSAR is coming from the data subject (or their authorised representative). What identity checks are carried out will depend on the individual circumstance, but SUs should err on the side of caution to avoid any potential breach of data to a malicious third party.

Can we charge a fee for carrying out the DSAR?

Most requests must be dealt with without charging a fee. Under the new regime, a fee can only be charged in exceptional circumstances (e.g. where a request is particularly excessive). This is a change from the old regime, which permitted a small fee to be charged.

Should we do anything else before searching for the information requested by the data subject?

SUs should examine the request and seek to agree parameters for any search of its records with the data subject.

For example, a data subject requesting “all correspondence relating to me” might be looking for correspondence around the time of a specific event, so the search parameters could be set to search 3 months either side of the event. This minimises the amount of data which needs to be searched through, whilst also making the exercise helpful to the data subject.

Where do we need to search?

A DSAR covers all data held by the organisation. So, if the SU has paper records, these will need to be searched alongside electronic filings. A plan should be put in place in anticipation of a DSAR to identify where personal data is held and how it can be accessed and searched effectively.

Should I share all the information I find with the data subject?

No. Information about others will undoubtedly be held alongside information about the data subject. This should only be shared if the third party concerned has consented or otherwise if it is reasonable to do so.

Often, this means that details about third parties should be redacted or anonymised before the document containing their personal data is shared.

How quickly do we need to respond to the data subject?

Most of the time, the SU will have one month from receipt of the DSAR (or, if relevant, any ID requested) to respond to the request, irrespective of whether the SU is open for business.

This is particularly important during the current Covid-19 climate (though the ICO have noted they will be understanding if timescales are not met precisely [in the current outbreak](#)), but also through the summer and at other times when staffing may be reduced.

SUs can extend the timescale for responding to the DSAR by an additional 2 months where the request is complex (e.g. there is lots of information to search through) or multiple requests have been sent by the data subject. Notification of this extended timescale should be given within a month of the original request and reasons must be given for the extension.

Do we just send on the personal data we have identified as being disclosable?

Additional information should be provided to the data subject alongside copies of the personal data to be shared as part of the request. This information explains to the data subject how their personal data is held and used by the SU (though much of this information should be able to be provided by sending a copy of the SU's privacy notice).

Where can I find more information about dealing with DSARs?

The ICO has produced detailed guidance to assist organisations in responding to a DSAR, which can be found [here](#).

We also have a dedicated data protection team at Wrigleys, who would be happy to help should you require any assistance.

The information in this article is necessarily of a general nature. Specific advice should be sought for specific situations. If you have any queries or need any legal advice please feel free to contact Wrigleys Solicitors LLP.

Overseas students identified as money laundering targets

Article published on 21 May 2020

Why are criminals using international students and what can students' unions be doing to raise awareness and protect students?

Overseas students studying in the UK have been identified by the National Crime Agency as a key target for criminal gangs attempting to launder money, with Chinese students being particularly vulnerable.

The NCA reported in its 'National Strategic Assessment of Serious and Organised Crime' for 2019 that account freezing orders were placed on 95 UK bank accounts containing an estimated £3.6 million. The accounts were mainly held by overseas students studying at universities in the UK.

One bank, Santander, alerted the authorities in the UK about suspicious cash deposits of over £57m which were linked to 600 bank accounts opened by students.

Simon Lord, of the National Crime Agency, spoke at the Law Society's anti-money laundering and financial crime conference and said that the industry is worth 'hundred of millions, if not billions' and in particular is used as a way to transfer funds out of China.

There has been a rise in incidents due to restrictions introduced by China on overseas investments and outbound transfers of funds. Chinese nationals are subject to an annual cap of 50,000 USD each year unless they are emigrating, and transactions of more than 10,000 USD must be finalised through the State Administration of Foreign Exchange. This means that large transfers cannot be made without government approval which is unlikely to be granted.

Although some Chinese nationals may wish to transfer funds to invest in property overseas, there will also be criminals who need to use alternative means to circumvent such limits. The NCA suspects that the money contained in the 95 UK bank accounts of overseas students was either the proceeds of crime or intended to be used for criminal purposes.

Although these are issues of Chinese law, it is crucial to be aware of the money laundering implications of such restrictions as there are several ways in which overseas students may be implicated in the money laundering.

The National Crime Agency identifies ‘money mules’ as those who allow their bank accounts to be used to move money. Overseas students are likely to be targeted because they already have a bank account open in the UK and could be used as a way to channel funds out of a country. Students may not be aware that their account is being used for illegal means or may be acting under duress.

The NCA notes the two key methods associated with the laundering of the money of the frozen bank accounts. Firstly, there may be small and frequent cash deposits, which are paid from different locations into the accounts to avoid scrutiny. Secondly, the cash deposited may be used to buy goods which are then exported to China, despite there being no connection between the party transferring the funds and the party making the purchase.

Criminals may seek to recruit students by asking them to receive money and make a further transfer, and offer a cut of the money as payment. Students may also be conned into handing their account details over unwittingly. Online scam job adverts claiming to pay high sums for minimal hours working from home are common signs of money laundering and are easy to target towards students.

Alternatively, students may be unwittingly breaking foreign and domestic laws by using non-regulated means of transferring money. ‘Hawala’ is an alternative banking system where money can be sent faster and with lower fees than by using regulated bank transfers. Messaging services such as WeChat, which can also be used to transfer money, are popular amongst Chinese students and their families due to the strict money transfer laws in China. However, using a hawala system to transfer funds from China to a student here is illegal in the UK due to tight foreign exchange regulation. The NCA also believes that the hawala system can easily be infiltrated by organised crime gangs.

There are now more than 100,000 Chinese students studying in the UK, creating a large pool of potential targets at universities all over the country. Although all students are at risk of becoming a victim of this type of money laundering, there is a risk to Chinese students in particular, due to the restrictive domestic laws on outgoing transfers.

The NCA can apply to have account freezing orders and forfeiture orders put on suspicious accounts through the magistrates court. Such restrictions may leave them unable to pay living expenses and tuition fees. For overseas students studying in the UK, who may not have an immediate support network, this could have a devastating effect on their day to day life and studies. Students’ unions should be aware of this growing trend and look out for those students who may be particularly vulnerable to the risk of being used by organised crime networks.

Students’ Unions – managing risk in the current climate

Article published on 2 April 2020

The Covid-19 pandemic is a “black swan” event and lockdown, social distancing and self isolation are the immediate consequences for individuals.

There are, however, clear implications for all types of organisations – as has been seen in the news over the past weeks. University teaching has all but ended and decisions are having to be taken about summer term and examinations for students.

Students’ unions are of course charities and their trustees are responsible for actively managing risk. Although SUs won’t have prepared specifically for the current circumstances they should have had in place a disaster management plan. The Charity Commission has extensive and helpful guidance to be found about handling risk at [CC 26 - Charities and Risk Management](#).

What immediate actions should SUs be taking?

On the basis there is a disaster management plan in place then SU trustees should be both implementing this and, in parallel, be reviewing it to ensure it is sufficiently extensive and is covering issues as they arise.

One immediate implication in terms of decision-making, given the necessity for remote working, is that there should be clear delegated authority to staff or individual trustees to make key decisions quickly. Lines of authority and decision-making should account for possible unavailability through illness.

SUs generally have objects to advance education in three ways:

- Promoting the interests and welfare of students and representing, supporting and advising students;
- Representing students to the university and other external bodies;
- Providing social, cultural, sporting and recreational activities and forums.

It will be necessary to consider the particular risks to operations in respect of each of these objects to the extent they apply to your SU. It will however be difficult to carry out a good deal of this remotely. How will welfare services be provided to students who can't just drop by the SU building? This might be achieved remotely online but there will be issues of maintaining adequate confidentiality that will need to be addressed. It will also be necessary to consider to what extent assessment can reliably be made as to how vulnerable individual students might be in the absence of face-to-face meetings. Consideration will need to be given as to the amount of resource given to individual support or to the provision of more generic advice and support. Mental health issues will undoubtedly be high on the agenda in view of uncertainty over examinations and arrangements for the next academic year.

It is, presumably, a given that all social, cultural and sporting activities and forums will have been postponed or cancelled – and the implications of all such changes will need to be considered. There may be financial implications in some circumstances (say where events have been organised by student societies or by the SU itself, which they have paid for in advance). You will need to review contracts in such circumstances, to see what your options are. There will certainly be social implications, with few students remaining on campus, and to what extent any of these activities can be replicated online might need to be thought about.

In view of the multitude of issues that universities will be trying to grapple with in the current environment it may be difficult for SUs to get their voice effectively heard at university level. This is important however in view of the uncertainty for students as we move into the examination and assessments season.

The closure of SU commercial services including bars, cafes and shops will have had an immediate impact on income. It will be necessary not only to consider the resulting short term cash flow issues but also to review and revise cash projections and budgets for the current and following academic year as these are impacted by the ongoing shutdown.

Other more general considerations that will need to be addressed by SU trustees include:

- Health and safety issues - for staff and volunteers (in addition to students)
- Operational risk
 - o security of property from damage and theft;
 - o functionality of IT systems (storage and communications);
 - o ability to deliver contracted services

- Financial risk – asset protection (including cash and investments); immediate and longer term funding issues; specialist insolvency advice may be necessary.

As far as staff are concerned it will be necessary to review contracts to see what arrangements can be made and what, if any, impact the various Government schemes introduced over the past few weeks might have, if any.

What if an SU doesn't have a disaster management plan?

Whilst this will be difficult in circumstances where trustees and any management will be operating remotely, they should now be establishing a risk strategy and a disaster management plan. Annex 2 of the Charity Commission guidance referred to above should be used as a starting point. The current situation will necessitate working through this as many of the issues in it will be tested in the current environment. Preparing the plan should be delegated to a small team and then reported back to the trustees for review and approval.

Will insurance provide cover for any losses arising?

It is quite possible that insurance policies will not cover issues arising from Covid-19. That said, it is important that trustees review policies (a) to see what cover the SU does have and (b) see what remedial actions they may need to take to avoid the policy being invalidated (e.g. in relation to empty buildings). Event cancellation cover may have been in place and this will need to be looked at as this is where costs may have already been incurred (e.g. in relation to end of year social events) might be recovered.

We have written a series of articles about how to handle various legal issues during the Covid-19 pandemic, including employment and HR matters, contractual situations and holding remote meetings. You can see these other articles [here](#).

What are the Charity Commission filing obligations for my charity? Part 1: The Annual Return

Article published on 12 January 2021

A closer look at your charity's obligation to file an annual return.

A number of factors determine the reporting and accounting obligations a charity owes to the Charity Commission, including the charity's legal status, whether it is exempt from registration and the charity's gross annual income. This series of articles specifically looks at the reporting and accounting obligations of registered charities and does not consider the further obligations on charitable companies under the Companies Act 2006.

Unless it is an exempt or excepted charity, a charity must register with the Charity Commission if it has an annual income greater than £5,000. All registered charities must file an Annual Return, with the questions varying depending upon the income of the charity. All charities must also prepare an Annual Trustees' Report and Annual Accounts, with charitable incorporated organisations (CIOs) and those with a gross income of more than £25,000 being required to submit these to the Charity Commission. In all cases, the filings must usually be submitted within ten months of the registered charity's financial year end.

However, during the Covid-19 pandemic, the Charity Commission is seeking to take a more flexible approach to regulation. As such, registered charities can contact the Charity Commission to request a three-month filing extension for submission of the Annual Return – though success is not guaranteed^[1].

It is common for trustees to delegate the preparation and submission of the above documents. However, the Commission is generally subjecting charities to a greater degree of overall scrutiny and it is therefore important that charity trustees, given their ultimate responsibility, check and approve all documents before their final submission and to ensure all the information submitted is accurate and up to date.

The Annual Return

The Charity Commission published a new Annual Return in November 2018, with new questions on overseas funding, staff salaries and the safeguarding of children and vulnerable adults. These new questions reflect greater scrutiny of charities and the additional information provided (such as the number of staff members receiving pay of above £60,000) now feeds directly into the public Register of Charities. This in turn provides the public with more information on how charities operate and places the onus on trustees to ensure the information submitted to the Charity Commission as part of the Annual Return is accurate. In line with this, the full details of the charity and all trustees must be fully up to date before the Annual Return is submitted. Charities should therefore ensure the relevant charity administrator has the correct log in details to easily update its records (at the instruction of the trustees) as such changes happen.

CIOs and registered charities with a gross income exceeding £10,000 in any financial year must file an Annual Return with the Charity Commission within ten months of the end of that financial year. The level of income received by the charity in the relevant period determines the level of information required.

Broadly, the Annual Return provides the Charity Commission with a snapshot of the charity and is comprised of the following:

- Charity information – confirmation of the details appearing on the public Register of Charities on the Charity Commission’s website.
- Financial information – details of total income and spending.
- Serious incidents report – trustees must sign a declaration stating there were no serious incidents over the previous financial year that have not reported to the Commission.

Where a charity has a gross annual income of £10,000 or less, it completes a simplified annual update form. This does not have a statutory deadline, but the Commission recommends submitting it as soon as possible. Where a charity misses its filing deadline, it will be marked as ‘overdue’, which may have a detrimental effect on potential funders or donors and deter potential volunteers from getting involved.

What are the Charity Commission filing obligations for my charity? Part 2: The Annual Report

Article published on 18 January 2021

A closer look at your charity’s obligation to prepare and file an annual report.

The charity trustees of all registered charities must prepare an Annual Report. Where the charity’s gross income in any financial year exceeds £25,000, the Annual Report, along with the Annual Accounts, should be submitted to the Commission within ten months from the end of that financial year. A charity with a gross income of £25,000 or less should still prepare an Annual Report, but is only required to provide this information if the Charity Commission or a member of the public requests it. All charitable incorporated organisations (CIOs), irrespective of gross annual income, must complete and file an Annual Report.

The Annual Report is designed to provide people with a deeper understanding of what the charity does and demonstrates the benefit to the public of the charity's work, whilst also showing funders what was achieved with their money. It should include the following:

- details of the charity, including name and address, registered charity number, trustees and advisers;
- how the charity is structured and the recruitment process for trustees;
- governance and management details;
- a summary of the charity's objects and how its activities undertaken to further those objects;
- the charity's main achievements during the relevant financial year;
- a financial review (in particular covering the charity's reserves policy);
- a public benefit statement confirming that the trustees have complied with their duty to have due regard to the guidance on public benefit published by the Commission in exercising their powers or duties; and
- where a charity or CIO is subject to a statutory audit, it must produce an annual report in accordance with the relevant SORP.

It is important to note that where a charity is a company, the Trustees' Annual Report overlaps with the reporting requirements under the Companies Act 2006. For ease, the same document filed with the Charity Commission can be filed with Companies House, providing that it covers both sets of reporting requirement.

What are the Charity Commission filing obligations for my charity? Part 3: The Annual Accounts

Article published on 25 January 2021

A closer look at your charity's obligation to prepare and file annual accounts.

Every charity (whether it has reached the threshold for registration with the Commission or not) must keep accounts and prepare annual accounts, which must be available to members of the public on request.

However, only registered charities with a gross annual income greater than £25,000 and CIOs, irrespective of income, must file their accounts with the Commission. There are varying requirements depending on income and charities should refer to the [Charities SORP](#) for detailed requirements. For example, there are specific requirements in relation to the disclosure of grant making activities, accounting for heritage assets or accounting for branch or linked charities.

Overall, there are several filing requirements of which charity trustees must be aware. Complying with filing requirements not only satisfies the Charity Commission in its role as regulator and ensures the Register of Charities is accurate, but also reassures potential donors and funders and may encourage volunteer and public engagement.

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