

Unlocking restricted funds: common themes

Charities are in urgent need of alternative sources of funding.

Laura Soley and Lucy Rhodes outline the scope for charities to release restricted funds and endowments to support their activities.



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I have a broad practice covering general charity law and governance matters, with a particular focus on dealing with technical charity law issues and structures. I regularly advise on charitable trusts, restricted funds and endowments, including setting up new endowments and releasing out-of-date funds.



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I advise on a range of legal issues that affect charities and not-for-profits of all sizes: including technical charity law issues relating to trusts, restricted funds and endowments.

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The COVID-19 crisis has had a catastrophic impact on charity sector income. This has created a real risk to the solvency of some charities at a time when many face an increased demand for their services.

Charities are looking carefully at the financial resources available to them. We are aware that many charities have been considering whether their restricted funds and endowments might be used to support the charity's activities during the crisis. Can restrictions over these funds be changed or released so that they can be used to boost the charity's finances?

Here are three common themes we have encountered when advising charities in these circumstances:

1. Incorrect treatment of funds

In a recent review for a health charity, we identified that funds which, for many years, had been accounted for as restricted funds – which trustees are legally obliged to use in a particular way – were in fact 'designated' funds that the trustees could re-prioritise at any time at their discretion and use for the general purposes of the charity.

Often, funds incorrectly treated as restricted funds have come from legacies made subject to an expression of wish that the funds be used for a specific project or activity. This does not generally create a binding legal obligation, but it is not unusual for these funds to be incorrectly treated as being legally restricted in the charity's accounts.

We recommend that charities reanalyse the terms on which restricted funds have been established. They may find that they have more funds available for core activities than they thought.

2. Out-of-date purposes

When considering making changes to restricted funds, trustees will want to consider the donor's intentions as well as the potential for reputational damage if

the charity seems to be overriding them. However, trustees have a responsibility to make sure that funds are put to effective use – so where funds cannot be used according to their existing terms, they have a positive duty to seek to change them.

By modernising the purposes of the funds – and possibly merging them with other funds – the monies can be put to good use. Charities can seek to use powers in the governing document, or in the Charities Act 2011, to free up the funds for immediate use.

3. Income insufficient to achieve purposes

We regularly work with professional membership associations and educational institutions that hold multiple restricted and permanent endowment funds that have been established through appeals, lifetime gifts or legacies for the provision of specific annual lectures, awards or prizes. If the fund is permanent endowment – where the charity can only spend the income generated by the fund and not the capital – difficulties can arise where it no longer generates enough annual income to meet the costs of the lecture, award or prize. Releasing the permanent endowment restrictions from all (or a portion) of these funds (using powers in the Charities Act 2011) can unlock funds that may have been dormant for many years.

FIND OUT MORE

For more information on unlocking your restricted funds please see <https://bateswells.co.uk/2020/03/releasing-restricted-funds-and-endowments/>