

Ethics washing – top tips to help protect your charity

MINI GUIDE



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Ethics washing, greenwashing, bluewashing, pinkwashing, ethical laundering, eco washing...the list of terms continues to grow, and with it grows the risk of charities coming under scrutiny if what they do doesn't align with their stated values, the promises they make publicly, the services they offer, or if they misrepresent their brand to the public. Simple mistakes, inaccuracies or misleading claims can have big consequences, risking lasting reputational damage among key stakeholders, loss of income and even regulatory intervention.

We can help you protect your charity's good name and avoid ethics washing based challenges, so have put together our top tips to help minimise the risks.

What is ethics washing?

Ethics washing, a term not too dissimilar from greenwashing, is used to describe the practice of organisations sharing false or misleading information about themselves to paint their organisation in a better light, even if they have no way of backing up their claims. One example is having an excellent diversity and inclusion policy, but then in practice discriminating against applicants when recruiting. By making false claims, organisations may be deceiving their stakeholders into believing they are having a more positive impact on society than they really are.

What are the consequences?

Being accused of ethics washing, even if the charity can justify its claims, can seriously damage a charity's reputation and ultimately negatively impact its income, and so the impact it can make for its beneficiaries. If a charity loses the trust of donors and other key stakeholders, donations and support from volunteers may run short and valued employees might look elsewhere, all with potentially devastating consequences for the charity. This is already happening, particularly in the commercial sector; it was recently reported that **Boohoo has broken its promise** to overhaul its practices and to make clothes fairly and ethically, which has led to significant bad publicity stemming from the BBC Panorama documentary.

An environmental protection charity could be the subject of serious scrutiny if it became public that one of their main donors was a company known as a major polluter, or the charity may be less inclined to report on bad practices that risk shining a light on a corporate partner; or a charity with charitable objects relating to the prevention of poverty may see a drop in donations if it is found to be paying its own staff poorly. It is even possible that a charity could face a legal claim for misrepresentation by a third party (for example, if an untrue statement has persuaded a third party to enter into a contract with the charity).



In the worst case scenario, if found guilty of “washing”, for example greenwashing, aside from the reputational damage and everything that goes in hand with that, a charity could face regulatory action in the form of bans on advertising. There is also the potential to face legal action in respect of unfair commercial practices; the Digital Markets, Competition and Consumer Bill, likely to be enacted in mid-late 2024 gives the Competition and Markets Authority increased powers (including imposing monetary penalties without the need to go to court) to tackle misleading actions and omissions, including in respect of ethical or greenwashing claims likely to mislead the average consumer into taking a transactional decision which they would not have taken otherwise. Although this is likely to focus on “commercial practices” charities could be at risk via their trading subsidiaries.

In this mini guide, we share our top tips to help protect your charity’s good name.

1. Practise what you preach

Ensuring you practise what you preach may be the most important tip to protect your charity from any allegations of ethics washing. For example, if your charity lobbies against cruelty to animals, make sure that your supply chain and investment portfolio reflects this. Or are you a charity advocating for human rights? If so, what rights do you give your staff and do they align with your values? Even if resources are tight, undertaking a governance review and general review of your policies and procedures, including your diversity and inclusion, employment and volunteering policies, should make your position more defensible and help you to avoid potential issues in the future. Make sure they all align with each other and support the values which your charity prides itself on.



2. Be honest at all times and make sure you are speaking facts

The first thing to do with any campaign you run, or any service you are advertising, is to be honest with its credentials. Make sure that any claims you are making are demonstrably true and clear for the reader to understand. If you aren't completely honest about the credentials of the work your charity is doing then you could face difficult questions, including from the Advertising Standards Authority and potentially even fines by the CMA.

If your campaigns discuss third parties' credentials, are you confident you will not face a claim in defamation or for malicious falsehood?

If you claim to have a positive working environment, do you pay a living wage and ensure your people can work flexibly to support their personal responsibilities? If you're claiming to be green yourself, what evidence do you have to back up your claims if challenged? Have you taken action to reduce your carbon footprint? Have you set yourself targets and verified your data? You need to be ready to respond to questions with evidence that supports what you say – or even better – be proactive and transparent and show the evidence upfront. This is a fast evolving area – as indication of the general direction of travel, the EU Green Claims Directive, for example, which is likely to become EU law by 2026, makes it clear that you can't make unsubstantiated generic environmental claims, or suggest something is neutral or has a positive impact on the environment carbon because of omission offsetting schemes; far greater transparency will be expected. Not acting in line with your stated people claims can also leave you liable to reputationally damaging legal action.

3. Don't let your charity be used for ethics washing by your corporate partners

It goes without saying that you should select corporate partners that align with your own values. However, don't just take their word for it – do a deep dive into their operations and policies and determine if they are only using you in an attempt to clean up their own image. Watch out for organisations that use their public support of an environmental or social initiative to conceal the fact that they are not doing much to incorporate those values into their organisation. Pay attention to whether they rely heavily on 'buzzwords' such as 'eco-friendly' or 'socially responsible' without providing specifics – a lack of transparency can distort the true nature of the company's practices. There is much publicly available information via the internet and elsewhere – don't forget to do your homework.

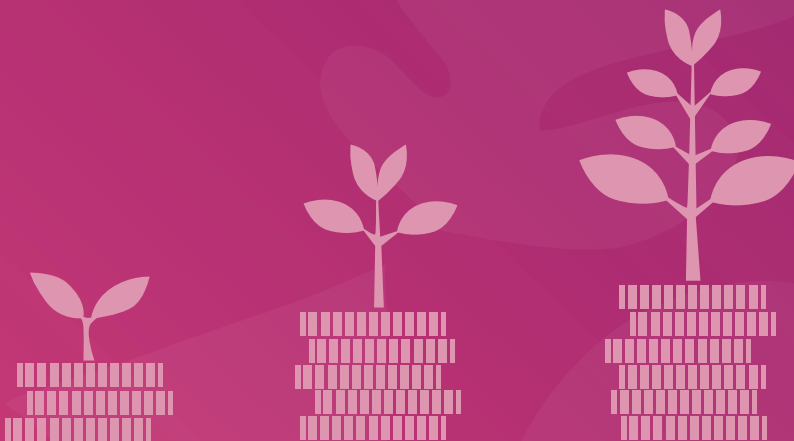
When entering into commercial partnership agreements, understand the terms and conditions carefully and have the confidence to raise any issues you aren't comfortable with. You could also consider asking the commercial partner to sign up to a set of standards governing their own conduct, for example meeting certain carbon reduction, social value, or other impactful targets and to report to you on them.

If you are happy with your corporate partners using your charity's good name in sponsorship deal, be clear about what can and cannot be said. This could help you to avoid or better manage a reputational crisis. Ensure that the commercial partnership agreement allows you to terminate the agreement if the commercial partner causes any reputational damage to your organisation and be ready to make a public statement distancing yourself from them.

4. Choose your investments wisely

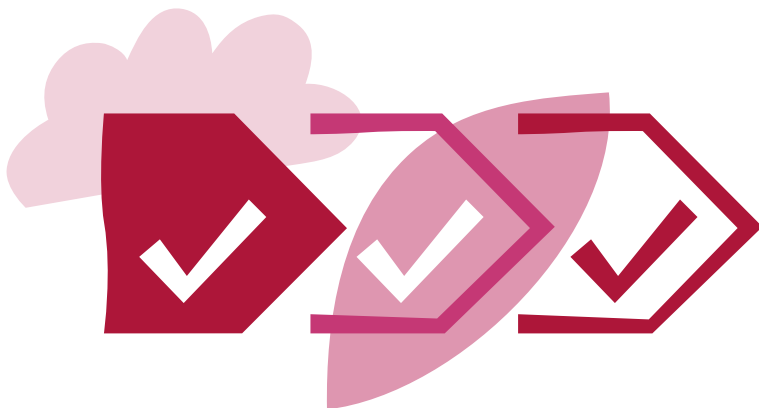
Have you read [CC14 – investing charity money: guidance for trustees?](#) It's important you do. The guidance explains the principles that trustees need to follow to act in the best interests of your charity. Importantly, charities can now make socially responsible investment decisions which align with the goals of the Paris Agreement to avoid the worst impacts of climate change, following the successful outcome of a High Court case, [Butler-Sloss v Charity Commission](#), in which we acted for the claimants.

You can choose funds which are ethically sound and where you can track exactly how your money is being invested. If you offer your employees a pension, consider switching it to a more environmentally sustainable and ethical fund – there are plenty on the market. Evidence shows that changing your pension to a more ethical fund is the single biggest impact an individual can have from a climate perspective. Doing so may help reduce the risk of your charity having its investment policy criticised.



5. Introduce sustainable supply chains

An organisation's supply chain typically accounts for over **ten times more emissions** than its operations and is a potential source of significant risk on diversity issues, especially modern slavery. Understanding and addressing the impact of your supply chain is key for any charity that wants to maximise its positive impacts. We have seen a move in the market towards including sustainability and impact drafting in contracts to make improvements to supply chains and reduce potential negative social and environmental impacts, sometimes using rebates or other incentives to achieve these goals. Changes include provisions addressing specific issues like contractual carbon neutral targets, or commitments to confirming working practices at third party suppliers are fair and do not include modern slavery. If your charity offers free gifts to donors or fundraisers, or perhaps produces branded items, make sure that they are ethically sourced or manufactured. If your charity is raising awareness about climate change or other social or environmental issues, then not doing so could be a significant risk for you.



6. Make sure that your brand is protected

It's important that your Intellectual Property, brand and trade names and mark(s) are protected so that you have the power to stop other parties from using branding that is the same, or confusingly similar, to yours or otherwise infringes your rights. Confusion can mislead the public, seriously damage your reputation, and divert donors, or users of your services away from you.

How we can help

We specialise in assisting charities in these matters, whether that's helping respond to claims or complaints, helping with commercial participator and other agreements, or protecting intellectual property and enforcing it in a responsible manner. We review draft communications and campaign materials with a critical but helpful eye. We offer clear and concise commercial and strategic advice to organisations grappling with challenges that may arise or that may impact their reputation.

We are experts in trade marks – from clearance searches to registration, in the UK and worldwide, and we can also help you with licensing, and with resolving IP-related disputes of all kinds. We always make sure we minimise the need for costly court action and harmful publicity.

We can also help you to look at your supply chain in a more strategic way and tailor any commercial contracts to ensure your ESG goals are achieved. Our team of expert lawyers can help you to review and draft your contracts with suppliers, as well as thinking about additional reporting and audit rights to enable tracking supplier performance. Recognised as one of the leading law firms for charities and as first ever law firm to become a B-Corp we understand the importance of getting it right.

Get in touch

If your charity would like support in any of these areas, is already facing allegations of ethics washing, or if you have any questions on how to protect your brand more generally, please get in touch.

We can provide training sessions for your in-house marketing, communications, and branding teams, as well as senior stakeholders. We can discuss how to spot, and avoid, ethical washing claims and how to respond if any issues arise.

We are happy to meet with you on a no obligation basis to discuss how we might support you.



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Making a profit is core to all businesses but our goal is to combine this with a real social purpose. Our values are pivotal to us, they shape our decisions and the way we live and work.

We focus on positive social impact as much as we focus on being a successful law firm. Our top tier legal advice is coupled with a real desire to drive change and we were the first UK law firm to achieve B Corp certification, awarded to businesses that balance purpose and profit.

Today, our clients are diverse – from corporate household names, to public bodies, to start-ups. We're also the firm of choice for thousands of charities and social enterprises. We continue to lead the market we helped to shape.

Bates Wells challenges what is possible in legal expertise delivery.

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