



## THE FOUNDATION FOR SCIENCE AND TECHNOLOGY

### *LEARNED AND PROFESSIONAL SOCIETIES' NOTES FOR GUIDANCE*

## **MEETINGS AND CORONAVIRUS**

Normally liabilities for societies would arise for societies in cancelling or postponing meetings. However, the Coronavirus infection is causing such disruption worldwide that normality is on hold for the duration. There follows a best estimate of what the legal position is or is likely to be.

### General principles

- 1.1 Performance of duties imposed under contract or by statute may be frustrated by circumstances which are not the fault of the parties concerned.
- 1.2 The frustrating events may be known as 'acts of God' where there is no human cause or 'inevitable accident' where there is human cause but no fault, but the distinction does not affect the outcome which is that the duties of each party are discharged.
- 1.3 However, there may well be financial consequences. Normally, parties in breach of contract are responsible for any loss caused to the other parties and will be ordered to pay damages (financial compensation) to put the losing parties in the position they would have been in had the contract not been entered, and subject to the losing parties taking what action they could to mitigate their loss.
- 1.4 However, in respect of frustrated contracts, the position is that, if the contract is inherently impossible to perform, it is void but, if it becomes impossible after it is made, the position is governed by the Law Reform (Frustrated Contracts) Act 1943 unless the contract itself provides how losses should be apportioned. The Act requires that all sums paid under the contract are recoverable and sums still to be paid cease to be payable although the court may allow a party to retain a sum equal to any relevant expenses incurred by that party.

### Postponement of Annual General Meetings

- 2.1 AGMs are required by constitutions to allow the exercise of the democratic right of members to elect their governors, to challenge them on their decision-making and to consider the annual audited/financially examined accounts and the annual report. Thus, AGMs must be held for each year although not necessarily within the year to which they refer.
- 2.2 Most constitutions provide for a period of fifteen months after the previous year's AGM in which the next AGM shall be held, but such a period may not be long enough in the event of continuing problems (such as sickness epidemics, natural disasters, wars, et al).

- 2.3 Meetings are defined in law as 'the coming together of two or more persons for the discussion of common objects'. Thus, all those entitled to attend must be invited and must be able to communicate with each other when they do attend.
- 2.4 Some societies may try to hold AGMs by electronic means (such as teleconferencing or Skyping) which courts may regard as acceptable under modern conditions even if specific authority is not given in the constitutions. However, many societies will find that impractical given the numbers involved.
- 2.5 The obvious (and perhaps only) alternative would be postponement of the meeting even beyond any constitutional time-limit if the frustrating event made the earlier holding of the meeting impossible or undesirable. All those entitled to attend would have to be given appropriate notice but, in my view, not given the opportunity to object – governors must govern in the best interests (as they see it) of the majority, and I believe that the courts would support them in such a decision if taken in good faith.
- 2.6 I am supported in this view by the indication from the Charity Commission that, given the strong advice of HMG that meetings of more than two persons should not be held, it will take a relaxed view about postponing or delaying meetings even if the constitutions do not so provide. Similarly, it will take a similar position in respect of the late filing of documents including reports of serious incidents – although, of course, the documents must be filed in due course. Incidentally, the Commission is remaining open to give specific advice to charities.
- 2.7 Similarly and where relevant, HMRC has announced that charities may seek an extension of time for the filing of annual returns. This assumes that charities' staff are still in a position to file returns or seek a delay, but this announcement was made before the expectation was published by HMG that home working should be the norm and meetings should only be held electronically. Thus, my expectation is that delays without specific permission will be accepted without criticism once normality returns.
- 2.8 The Institute of Chartered Secretaries and Administrators/The Chartered Governance Institute has also published guidance, again pre-dating the advice of HMG, that AGMs should be delayed if notices have not been issued, or postponed if they have, or meeting be held by using electronic means if possible. This guidance does refer to the importance of quora being present, in person or by proxy, and constitutional powers being available to do any of these possibilities. Little is said about situations where constitutions do not give such powers to be used: my view is then that societies must take decisions in the light of the circumstances in which they find themselves. It is inconceivable that, in the present circumstances, any member or regulator will seek action against a society acting in good faith and within its capabilities: if anyone did, they would have little support from the courts or the appropriate Government Department.

#### Postponement of other meetings/conferences

- 3.1 While postponements of other meetings do not usually raise constitutional issues, they do raise financial issues. The settlement of such issues will depend on the sense and goodwill of the parties or, in default, the decision of the courts based on the Law Reform (Frustrated Contracts) Act.

3.2 The decision of the courts will obviously take into account the orders or guidance from HMG that meetings of over so many persons shall not be held, the fact that no one is the cause of the disaster, the payments already made, and any benefit already received.

3.3 Where the decision is taken by a society's governors in circumstances where the meeting could have been held but with uncertain consequences, the governors must take the decision in the light of all the information they have, and must then be prepared to justify their decision if challenged in the courts. In such matters, the decision must rest on weighing the balance between the health and well-being of the persons involved and the extent of the financial losses.

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