



Working with organisations in financial distress

Peter Gotham
Gotham Consulting Ltd

peter.gotham@gmail.com



Who am I?

Peter Gotham

- Former head Charities and Social Enterprise @ MHA
- Specialist in support to this sector
 - including periods of opportunity, or stress
- Solvent and insolvent winding up of charities ... since 1984, and auditor, advisor and insolvency practitioner until 2016.
- A member of
 - Charity Technical Committee of the ICAEW
 - SORP Committee – until freed ... with release of SORP 2015





- Sector => Increasingly commercial
= greater risks
- Larger, and much greater importance in
delivery of services
- Mergers, collaboration ... Due diligence
- Importance of non-financial risks



Discussion points

- Legal position of advisor, when asked for advice?
- Legal position of trustee
- How do I identify organisations in problems?
- “In hindsight” - issues that charities forget to consider.
- Questions to ask when thinking about the help that they need?
- Resources or organisations that can help?



The law & advisor and Trustee

- A person who acts “by whatever name called”.
 - Probably all “management committee”,
 - Even if not all called “directors”
- A Shadow Director is
 - “any person in accordance with whose instructions the directors are accustomed to act”.
- incorporated = few risks personal liability, unless:
 - contractual obligation, or
 - breach of trust, or law



Insolvent?

- Cash flow, or going concern
 - “Inability to pay debts as they fall due”
 - Care re restricted funds
 - Care re exact timing of payments
- Balance sheet
 - “Assets less than liabilities
(including contingent and prospective liabilities.)”
 - Bear in mind extra liabilities on closure
- Wrongful trading
 - “Knew or ought to have known ...
.. no reasonable prospect of avoiding insolvent liquidation.”



Statement of Affairs

The insolvency “statement of affairs” (S of A) shows prospective recovery for each type of liability.

	Book Value	Est to realise
Assets subject to fixed charge		
Fixed assets		
claims against assets		
Other assets		
Debtors/ Bank balance		
Assets available to preferential creditors		
Preferential staff claims		
Available to unsecured creditors		
general liabilities		
Shortfall - subject to costs of liquidation		



At risk of insolvency?

- Take professional advice
- Not treat some creditors better than others – “preference”
- Consider risk wrongful trading
 - Act in interests of creditors
- Any legal judgement is made in hindsight
- Document decision making



Chances of managing

- Internal relationships
 - board resources emotional, intellectual and time?
 - staff resources emotional, intellectual and time?
 - sufficient trust between the staff and the board?
- External relationships
 - funders ... potential partner organisations ... creditors
- Of course
 - room for manoeuvre - financial & time
 - do not salami slice - cut once & cut deep
 - robustness management information systems
 - & service delivery !



Real life

In practice much depends on

- timing,
- relationships, and
- luck

But any legal judgement is made in hindsight ...