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Charity News

Spring 2019

Our Charity News includes useful guidance on reserves, risk including cyber breaches and the first digital code of practice. We also consider the impact of conflicts of interest, related parties and non-charitable connections and other pertinent issues giving you the inside track on the sector's current hot topics and latest guidance.

The newsletter is applicable to the whole of the United Kingdom and makes reference to the three UK charity regulators:

- the Charity Commission for Northern Ireland (CCNI)
- the Office of the Scottish Charity Regulator (OSCR) and
- the Charity Commission for England and Wales (CCEW).

All the articles may be of interest however to aid you we have included the following key:

Key

- United Kingdom
- England
- Wales
- Scotland
- Northern Ireland

Hot topics

Risk registers, is yours working for you?

Many charities state that they have a risk register. Often when it is produced, it is a colour coded spreadsheet identifying risks and highlighting whether they are considered significant. For many it has become a tick box exercise of identifying risks but not actually managing them.

Instead of a traditional register (or in addition to), a risk policy might work better. A risk policy would involve the trustees asking themselves where they are willing to take risks. This therefore needs to be linked to strategy. Areas to be considered:

- impact
- reputation
- compliance
- financial sustainability
- specific risks.

It can be helpful to focus on three broad categories of risk: project risks, operational risks and strategic risks.

A charity’s approach to risk will usually encompass a level of risk taking. Trustees should decide where they are prepared to take risks in order to innovate and grasp opportunities but still be alert and respond to their strategic risks.

Is now the time to revisit what your charity does on risk?

Defending your reserves policy

As trustees, do you consider your reserves are something to protect or something to manage?

More often than not, reserves are considered as something to protect. The UK has been through an unpredictable decade with economic downturns, slow growth and more recently, significant Brexit uncertainty. A high level of reserves that a charity holds has often been defended as something that needs to be protected, a ‘rainy day fund’.

However is this how trustees should think about reserves? Reserves are unspent income. As a donor to a charity, you would expect a good reason for that income not to be spent on charitable activities. Should trustees think of reserves as an opportunity cost, what is the charity missing out on?

Trustees develop the overall strategy of the charity including the financial strategy. The level of reserves required should be directly related to this strategy. It has been found that high levels of reserves can lead to complacency and poor financial practices and potentially will also deter donors / grants makers.

Ultimately the level of reserves held should be supported by an intelligent reserves policy which incorporates a detailed understanding of income streams, the charity's expenditure commitments and the level of risk, which links back to strategy. Where risks are identified, trustees should be trying to manage them without necessarily building up high levels of reserves. This could mean, diversifying income, partnering with another charity or altering its expenditure.

Does Wales need its own regulator?

Joe Saxton, founder of nfpSynergy, a research consultancy for the charity sector, made the case for creating a separate regulator for Wales at gofod3 on 21 March, an annual conference organised by Wales Council for Voluntary Action.

Creating a new regulator would also be in keeping with the pattern of other government bodies which are devolved, and Scotland and Northern Ireland have their own regulators, he added.

'Having a charity commission that covers England and Wales is an anomaly.'

Joe Saxton lists ten reasons in a blog:

1. Wales is not like England!
2. The Welsh public prefer to support Welsh charities
3. Other regulators and government bodies tend to be fully devolved or UK wide
4. The Welsh charity sector needs and delivers a separate identity
5. We need to know the size and shape of the Welsh charity sector
6. The other devolved nations of the UK have their own charity regulator
7. The public are reassured by knowing about charity regulators
8. CCEW has no strategy for Wales
9. CCEW delivers no Wales specific reports or content
10. Charity regulation in Wales should be accountable to the Welsh Government.

A spokesperson from the CCEW responded by clarifying that it operates with four offices, one of which is based in Newport, Wales and which operates bilingually in Welsh and English.

Conflicts of interest

In an number of recent CCEW statutory enquiries there has been a running theme of trustees not managing conflicts of interest. The findings are often coupled with breaches of trust and trustees not complying with their duty to apply charity funds. On too many occasions they point to trustees gaining personal benefit from transactions where clear conflicts of interest have not been managed.

The OSCR blog on 'Trustee Governance - conflicts of interest and related party transactions' highlights that charities often do have a register of trustee's interests but the register is not regularly updated or not all trustees have returned their declarations.

OSCR proposes that trustees should complete 'annual declaration of transactions the charity has had with, and donations the charity has received from, their related parties. This can also be combined with a declaration of expenses waived (which is also a required disclosure in the accounts).'

Of course having annual declarations must be coupled with a policy of how to deal with such conflicts.

Links with non-charities

Further to a consultation last year, CCEW has updated its guidance for charities with close links to non-charitable organisations citing examples where charities have not sufficiently managed the links. In some cases this has allowed charities to be misused to further non-charitable interests, including commercial or private interests.

The new guidance does not set out new rules or regulations, but draws together relevant law and practice in setting out six principles to help trustees ensure the charity's interests and independence:

- recognise the risks
- do not further non-charitable purpose
- operate independently
- avoid unauthorised personal benefit and address conflicts of interest
- maintain your charity's separate identity
- protect your charity.

CCEW point out that charities can set up or keep a close connection with a non-charitable organisation in order to make a positive difference for their beneficiaries. Work with non-charitable organisations must always further the charity's objectives. Trustees must not allow resources or activities to fund or support non-charitable purposes and should identify, properly address and review risks which come from the connection.

The guidance includes three checklists to help trustees assess whether the guidance has been applied. These checklists could also be used in other jurisdictions as a matter of best practice.

Guidance: **bit.ly/2GpxgwZ**

Free updated GDPR guidance

The Institute of Fundraising (IoF) has updated its GDPR guidance. A year since implementation of the legislation, the original guidance has been tweaked to include the latest thinking, and provide some more tips and advice.

The Information Commissioner's Office made it clear that organisations will need to continue to update their policies and procedures at appropriate intervals to ensure they are compliant with data protection laws, and 'just like a car needs regular servicing and an annual MOT, charities need to be regularly reviewing and checking that their processing of personal data is being done fairly and lawfully'.

The guidance includes new information on minimising data protection risks, advice about when to employ a data protection officer and how to assess a legitimate interest for direct marketing under GDPR.

Guidance: **bit.ly/2Djz8FQ**

Brexit related issues

At the time of publication, there is still no clear picture of the Brexit situation. If it has not been done already, it is recommended that charities spend time considering how all potential outcomes could affect them. There is a huge amount of helpful literature available.

Guidance: **bit.ly/2Indd4E** **bit.ly/2XksXJ7** **bit.ly/2vd98Hr**

More charities experiencing cyber breaches

According to the government's annual survey, over 22% of charities have identified breaches or attacks (business sector: 32%). Although a lower percentage of charities identify breaches compared to business, the cost is higher (£4,180 for businesses and £9,470 for charities).

The most common attacks are:

- phishing emails (81% of charities experienced breaches or attacks)
- others impersonating their organisation online (20% of charities experienced this issue)
- viruses or other malware, including ransomware (18% of charities experienced this issue).

Although the survey notes that the GDPR, has helped to ensure charities take action on cyber security, there is still more that can be done, especially around staff engagement and training. The survey revealed that 49% of charity trustees are only updated once a year on cyber security (Business sector: 34%) and cyber security training has only been given to staff in 29% of charities.

There has been an increase in awareness with 75% of trustees and senior management stating cyber security is a high priority (2018: 53%). Awareness of this problem appears to correlate with the size of charity, with smaller charities not identifying this as such a high priority.

The government has published a helpful '10 Steps to Cyber Security' but only 53% of charities have taken actions towards five or more of these steps.

Guidance: **bit.ly/2ZcbW5v**

UK's first charity digital code of practice

The UK's first charity 'Digital Code of Practice' has been developed to provide charities with practical advice on incorporating digital technology into their work. The code has been managed by a steering group of representatives from across the sector. It is voluntary and free to access for all charities and there are two versions available, one specifically for small charities.

The Lloyds Bank UK Business Digital Index 2017 showed only 48% of charities had full basic digital skills, and 50% of charity leaders lack confidence in introducing digital change.

The code has identified seven principles to be considered by charities wishing to develop their digital activity. The principles cover best practice relating to leadership, beneficiaries and other stakeholders, culture, strategy, skills, adaptability and managing risks and ethics. It also sets out how to measure success when making changes to digital activities.

Guidance: **bit.ly/2V69SwL**

Applying to become a Scottish charity

OSCR receives 1,100 applications for charitable status every year and since 2006 these applications have been paper-based.

OSCR can now process online application forms for anyone who wishes to apply to become a charity. From 1 May 2019, all incoming applications for charitable status must be submitted using the new online form.

Accountancy and tax update

Charities SORP (FRS 102) Information Sheet 2 published

In January 2019, 'Charities SORP (FRS 102) Information Sheet 2: Accounting for Gift Aid payments made by a subsidiary to its parent charity where no legal obligation to make the payment exists' was published. Information sheets allow the joint SORP-making body to clarify the application of the SORP or of particular recommendations contained within the SORP.

'It aims to provide guidance on the requirements of FRS 102 and the recommendations of the SORP related to this issue and suggest possible solutions for the implementation and disclosures of these changes.'

The guidance and examples focus solely on the situation where there is no legal obligation for the subsidiary entity to make a Gift Aid payment to the parent charity and focus only on the impact on the subsidiary.

Guidance: **bit.ly/2ZeSrJJ**

Changes to probate fees delayed

Changes to probate fees (the cost of administering a deceased person's estate or Will) have been delayed from the proposed introduction date of 1 April 2019 as the government is preoccupied with 'other parliamentary business'. Historically the fees have been chargeable at a 'flat rate' but the government wants charges to be linked to the size of the estate. It is expected that this change will now be debated in the House of Commons.

Four umbrella bodies, IoF, Remember a Charity, Institute of Legacy Management (ILM) and National Council for Voluntary Organisations (NCVO) have warned that the proposed changes to probate fees could reduce legacy income available for charities by £10 million. These bodies have requested that probate fees for estates and Wills that include legacy gifts be reduced and requested a meeting with the Ministry of Justice to consider this issue.

A letter from Lucy Frazer, Parliamentary Under-Secretary of State for Justice, stated that the changes have been delayed but that the government planned to press ahead, though did not give a timescale. She also indicated that the changes would not affect the charity sectors' income:

"I want to reassure you that the fees for these estates will never amount to more than 0.5 per cent of the value of the estate".

VAT zero-rate certificates on charity buildings

Two recent cases regarding the issue of VAT zero-rate certificates for charity buildings have highlighted the danger of assuming that the zero-rate of VAT will apply. Both the Upper Tribunal (UT) case of Greenisland Football Club (GFC) and the First Tier Tribunal (FTT) decision of Marlow Rowing Club may point to a hardening of HMRC's policy with regard to penalties issued for incorrect certificates.

The case of GFC related to a penalty issued by HMRC for the incorrect issue of a zero-rate VAT certificate. HMRC contended that GFC had wrongly issued the certificate to a contractor who supplied construction services in respect of a new clubhouse. GFC argued that the building works were correctly zero-rated as the intended use of the the building, was as a village hall, providing social or recreational facilities to the local community.

The FTT allowed the appeal and confirmed that if its decision was wrong then GFC would have a reasonable excuse for issuing the zero-rate certificate and the penalty should be withdrawn. The case went to the UT which overturned the FTT's decision on the liability of the works, holding that the FTT had applied the wrong tests. However it refused to uphold the penalty because it accepted the charity's defence that the certificate was issued after careful and reasonable consideration by the trustees as they had contacted its advisers who gave verbal advice that the building would be zero rated.

HMRC argued in court that all charity trustees must seek an HMRC determination before issuing a certificate. This is inconsistent with published HMRC guidance which states that the decision of trustees will be accepted where either they seek professional advice or a determination from HMRC is sought.

In contrast the Marlow Rowing Club had a similar penalty upheld and the issue of the certificate was deemed 'careless'. In this case the Club had obtained detailed opinions from a QC and accountants confirming the possibility of zero-rating, subject to developments in case law.

Contact us for the latest advice in this area especially when considering projects where zero-rating might apply.

Charity tax update

From 6 April 2019, the following changes apply:

Gift Aid Small Donation Scheme (GASDS) applies to small charitable donations where it is impractical to obtain a Gift Aid declaration. GASDS limit is raised to £30 from £20.

Small trading exemption limits have increased for charities from £5,000 per annum to £8,000. Where the turnover is greater than £5,000 (rising to £8,000), the limit is increased to 25% of the charity's total incoming resources, subject to an overall upper limit of £50,000 (rising to £80,000).

Gift Aid Retail Scheme rules allowing charity shops using the scheme to send letters to donors every three years (rather than every tax year) when their goods raise less than £20 a year.

Charitable exemption for business rates in Northern Ireland

Charitable exemption can apply where a property is occupied by a charity **and** where the actual use of the premises is dedicated to the charitable objectives of that charity.

Just because you are a charity does not necessarily mean you are exempt from business rates as both of the conditions must apply and the Land & Property Services will require proof of both parts. This can be a complicated area and charities should ensure they seek professional advice.

If you believe that your property should be exempt from business rates, you can apply for exemption using the non-domestic rates application for exemption form.

Legislative update

Employment law update

From 1 April 2019, the following change applies:

- Increase in the National Minimum Wage (NMW) which for workers aged 25 and over, is £8.21 up from £7.83 (other NMW rates apply)

From 6 April 2019, the following changes apply:

- Increase in Statutory Sick Pay (SSP) to £94.25 from £92.05 per week
- Increase in Auto Enrolment Pension contributions where employers must contribute a minimum of 3% and the total contribution must amount to 8%

From 7 April 2019, the following change applies:

- Increase in statutory pay for maternity, paternity, adoption and shared parental leave to £148.68 from £145.18 per week.

Scottish charity accounting and taxation

Scottish charities have their own legislation and taxation rules. Changes applicable include:

- A new Statutory Instrument has been published: the significant amendments in 'Update Bulletin 2' are applicable for periods commencing on or after 1 January 2019. This incorporates the 'FRS 102 Triennial amendments'. The legislation does not appear to allow for early adoption.
- When a charitable donation is made under the Gift Aid scheme, the charity can claim back 20% basic rate tax on any donations. Using Gift Aid can also generate a refund for higher rate and additional rate taxpayers. Across the UK higher rate taxpayers can claim back the tax difference between the higher rate and basic rate on the donation. A cash gift of £80 thus generates a refund of £20 for the charity, which receives £100. The donor claims back tax of £20, making the net cost of the gift only £60.
- Scottish taxpayers pay income tax rates which differ from those payable across the rest of the UK. Donations by Scottish taxpayers paying at the starter rate of 19% will be treated in the same way as 20% taxpayers in the rest of the UK. Donors may need to check that they have paid enough tax to cover the Gift Aid claim, however. Scottish taxpayers using Gift Aid who pay tax at 21%, 41% or 46% claim the difference between these rates and the 20% basic rate.

Consultations

Consultation on the process for developing the SORP

The charity regulators in the UK (CCEW, OSCR and CCNI) as the SORP-making body for charities sought views on what changes may be needed to the process used to develop the SORP 'Guiding the Development of the Charities SORP'. The SORP-making body aims to make changes so that the charities SORP continues to serve the needs of those interested in the work of the charity sector and the sector itself as well as it can.

A consultation document was issued: Guiding the Development of the Charities SORP. In addition to inviting responses, two consultation events were held and a number of respondents requested a meeting with the Panel to express their views.

The Regulators intend to make any changes in time for the development of the next full SORP. The consultation responses have been published on the charitysorp website.

Guidance: **bit.ly/2UDqNre**

NCVO publish Code of Ethics

Further to their consultation, in January 2019, the National Council for Voluntary Organisations (NCVO) published ‘Charity Ethical Principles’ which was partly formed in reaction to the safeguarding issues that have affected the sector.

These principles aim to support charities, their governing bodies and those who work and volunteer in and with them in recognising and resolving ethical issues and conflicts and make charities a safer place.

Regardless of the charity’s size, type or area of operation, the principles set out a framework for the ethical execution of charitable purpose. They can help charities in their decision making and in developing relevant policies and procedures.

Guidance: **bit.ly/2V0bQ1Q**

Scottish Charity Law Consultation

Having been more than 13 years since the publication of the Charities and Trustee Investment (Scotland) Act 2005 which established the legislative framework for charities in Scotland and 17 years since the ‘Scottish Charity Law Review Commission’ (McFadden Report) proposed the establishment of OSCR, it is time for a consultation seeking views on potential improvements to the Scottish statutory charity regulation framework.

The concept is for potential changes to charity legislation to promote transparency, accountability and trust to ensure the public continue to have confidence in both the sector and OSCR.

The consultation asked for comments into 10 specific points of law, these are as follows:

1. Publishing annual reports and accounts in full for all charities on the OSCR register.
2. An internal database and external register of charity trustees.
3. Criteria for automatic disqualification of charity trustees and individuals employed in senior management positions in charities.
4. A power to issue positive directions to charities.
5. Removal of charities from the OSCR Register that are persistently failing to submit annual reports and accounts and may no longer exist.
6. All charities in the OSCR register to have and retain a connection in Scotland.
7. Inquiries into the former charity trustees of bodies which have ceased to exist and bodies which are no longer charities.
8. De-registered charities’ assets and public benefit.
9. The speed and efficiency of OSCR’s powers to gather information when making inquiries.
10. The reorganisation of charities established under royal charter, warrant or enactment.

The consultation is now closed. Responses will be analysed and used as part of the decision making process.

Guidance: **bit.ly/2V2lNvy**