



## **CHARITIES NEWSLETTER SUMMER 2019 EDITION**

*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.*

### **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.

## **CONFLICTS OF INTEREST**

In a 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. To find out more [click here](#).

## **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. To find out more [click here](#).

## **BREXIT RELATED ISSUES**



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.

[Click here for NCVO guidance](#)

[Click here for ICAEW guidance](#)

## **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. To find out more [click here](#).

## **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. To find out more [click here](#).

## **CHARITIES SORP (FRS 102) INFORMATION SHEET 2**

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. To find out more [click here](#).

## **VAT ZERO-RATE CERTIFICATES**

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 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.

## 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.

## 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.



## NEW CODE OF FUNDRAISING PRACTICE

The Fundraising Regulator has updated the Code of Fundraising Practice. The Code sets out the responsibilities applicable to fundraising carried out by charitable institutions and third-party fundraisers in the UK. The changes follow a consultation held in Autumn 2018 and is focused on the style, presentation, clarity and accessibility of the Code.

The changes will come into effect in October 2019 and include:

- consolidation of the Code, rulebooks and legal appendices so that all of the standards can be found in one place;
- clearer navigation by restructuring the standards into three parts so that users can clearly identify which standards apply, according to the type of fundraising they do;
- clarification of where there are differences in law in England and Wales, Northern Ireland and Scotland; and

- transparent, jargon-free language, following an independent review by the Plain English campaign, which gave the updated Code a Crystal Mark standard.

## CHECK AND UPDATE YOUR CHARITY DETAILS

Since 12 November 2018, the first time you log in to your online account with the Charity Commission to do your annual return or update your charity details you will need to check and confirm your charity details are correct, or update them if needed. To find out more [click here](#).

Other changes to the update charity details service included:

- removal of public display names for trustees on the charity register
- linking trustee details - if a person is a trustee of more than 1 charity, changes to their details will be applied to all their entries on the charity register

## INDEPENDENT EXAMINATION OF CHARITY ACCOUNTS: GUIDANCE FOR TRUSTEES (CC31)

In August 2019 the Charity Commission updated their CC31 guidance for charity Trustees on Independent Examination of charity accounts. The guidance is much shorter than the previous version and explains what an independent examination involves, how to select an independent examiner for your charity and what you need to do to prepare for an independent examination. To find out more [click here](#).

## RELATED PARTIES

The Charity Commission have released an accounts monitoring review report on related party transactions in charity accounts. They reviewed the related party transactions disclosed in the accounts submitted by 262 charities. They found that less than two thirds of charities with incomes less than £1 million complied with transparency requirements. 86% of charities with incomes over £1 million provided the required information. The vast majority of charities covered trustees' remuneration and, to a lesser extent, trustees' expenses. However, the disclosure of transactions with persons and entities closely connected to the charity or its trustees was significantly less complete.

They are asking the trustees who did not fully disclose their related party transactions to provide them and their auditor or independent examiner with the missing disclosures. Where the auditor or independent examiner is a member of one of the main professional bodies, they are asking their professional body to obtain confirmation from their members of whether there are in fact any transactions that should have been disclosed and, if there are, to report this to us as a matter of material significance.

## CLOUD ACCOUNTING

Are you spending too much time keeping track of your charity's finances and not enough time elsewhere? If so it's time to move to an accounting system that works for you.

There are a number of online, or cloud accounting systems available which have advantages over traditional desktop software or Excel spreadsheets. Cloud based accounting systems are designed to save time on data input and enable more timely reporting of performance. The changes in the way that business performance data is reported to HMRC under the 'Making Tax Digital' regime means that choosing the right system for recording your business performance is more important now than ever before. DNG Chartered Accountants is a *QuickBooks Online, Xero and Sage One Partner*. Contact [the Cloud Team](#) today and discover how Cloud Accounting can transform how you run your business.



## TRAINING

If you would be interested in attending courses on new Trustees induction, refreshers for existing Trustees or have a particular training requirement then please contact us using the details below.

## **DNG DOVE NAISH LLP BLOGS**

Don't forget to look out for our latest [DNG blogs](#).

Your colleagues and contacts are welcome to join our free e-mailing list for future charity newsletters and details of events. Please ask them to contact us using the details below.

### **On behalf of the Charities Team**

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