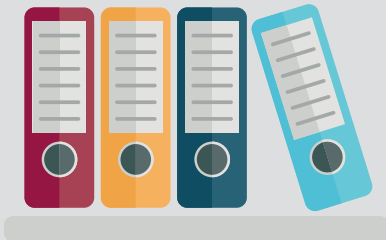
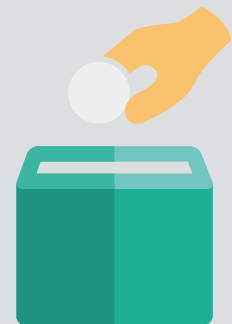
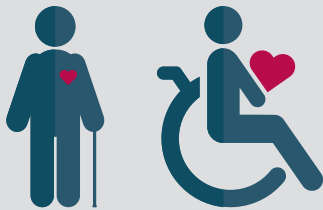


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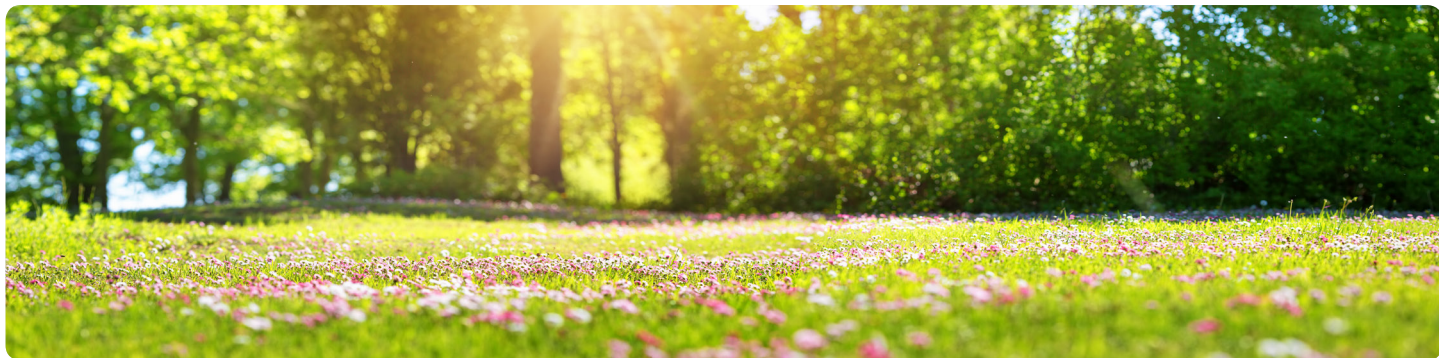
Charities and not for profit newsletter



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Welcome



Welcome to our summer 2019 edition of the Charity and Not for Profit Newsletter. This edition highlights the outcome of the Oversight Committee's review of the SORP, and the feedback from the four working groups to the SORP committee regarding the likely impact on the next Charity SORP.

We have also included a round up of other key updates to look out for. HMRC are requesting 3,000 tax returns from charities this year and we are aware that there is a focus on groups and their governance. Therefore the service level agreements article is very timely. HMRC have also been focused on gift aid declarations and we explain how charities should be voluntarily trying to provide more information to HMRC to prevent this becoming mandatory. In regards to risk management, we cover the basics of risk registers and how to try to prevent Charity Commission inquiries.

We hope you find this newsletter useful. Please do not hesitate to contact us if you need more information on anything we have raised.

Our key articles cover:

- A review of the Oversight Panel's published report on the SORP Committee
- Working Groups and the Future of SORP
- Recommendations on service level agreements
- Advice on Charity Commission Inquiries
- Insights on risk management and the Risk Register
- An update on the use of full names on Gift Aid declaration forms
- Changes to charity legacy notification

We also have a few pointers on things to look out for and future developments.

Stop press:

New Fundraising Code

The Fundraising Regulator has launched its new code of practice, due to come into effect in October 2019. The regulator launched a consultation in 2018 on potential improvements and simplifications to current guidance. The new code is designed to be easier to use for both the public and charities with clear guidance on the standards they need to meet, and a new layout to find relevant information more quickly. The new code can be found here:

- <https://bit.ly/2WmOwry>

Royal Opera House VAT Case

In May, the First Tier Tribunal released a ruling concerning VAT recovery for the Royal Opera House. The argument being considered was similar to the previous Mayflower case. Is VAT on production costs partly attributable to taxable sales of catering, as well as exempt ticket sales? Whereas in Mayflower the Court of Appeal rejected this argument, in this Tribunal it was accepted. The reason given for the difference was essentially that EU case law has moved on. It's not clear if HMRC will appeal or accept the new judgment and it's certainly true that all such cases must be considered on their facts. But it is worth reviewing your VAT recovery in the light of this decision.

Data Protection Reminder

Some 59 charities have recently been referred to the Information Commissioners Office (ICO) over failures in reacting to requests from the public to cease contact. It's worth bearing in mind that ignoring such suppression requests is a breach of current law and could result in legal action and potential reputational damage. The fundraising regulator is now 'naming and shaming' all charities referred to the ICO, and so the risk is real. Bear in mind that in each of these 59 cases the executives at the charities had been written to and given fair warning. Don't let it happen to you!

Governance review of the SORP Committee



On 6 June 2019, the Oversight Panel published its report on the outcome of the governance review of the SORP making process; and the composition and constitution of the SORP committee itself.

Professor Gareth Morgan was the independent chair of this Oversight Panel who said. "I was delighted when the charity regulators launched this review and I was honoured to act as the Independent Chair. As an academic, and as a charity practitioner, I am aware of the strengths of the Charities SORP but I have also been aware of concerns expressed by some. Our consultation led to a wide range of really constructive suggestions, and I am confident that if the Panel's recommendations are implemented the SORP will be considerably more effective in future."

The report has some 36 recommendations arising on the how to make the Charities SORP more effective. In summary:

- Reporting needs refocusing on the needs of the user from the public and beneficiary interest. There also needs to be a greater simplification of reporting for smaller charities.
- The SORP Committee is to be reformed regarding its size, composition and clarification of the respective roles of the SORP-making body and SORP Committee.
- Broader engagement is needed with a much wider group of stakeholders.
- The sector/charity regulators should collaborate to codify best practice in non-statutory financial reporting.
- The SORP-making body, supported by the Financial Reporting Council is to ensure the redesigned SORP process happens.
- The charity regulator is to ensure that the SORP process is adequately resourced to implement these recommendations.

Some of the key themes worthy of highlighting from the report are that in developing the next SORP the aim should be to simplify and clarify the report and accounts, making these an easy read for proxy users and those interested in the work of charities. There is a SORP Committee policy to 'think small first' which is recognised not to have been acted on by the Committee very well in the past, and perhaps a small charities SORP is an answer. Generally a drive for simplified accounts and key financial information – with proxies for what represents public interest should be used to develop the SORP. It would be very welcoming to have a root and branch review of the Charities SORP and the additional financial information required under it to determine what is useful and what is superfluous to produce more simplified meaningful accounts.

There is recognition that the development of the SORP will require greater engagement with a wider group of stakeholders which includes the commissioning of focus groups and engaging critical friends. It was

recognised that much wider consultation and broader engagement could uncover innovative and practical ideas. The use of illustrative examples in the consultation process would aid the readers in understanding the practical implications of any suggested changes and help in that engagement. More channels such as social media, direct approaches to umbrella bodies and panels should be used to engage more audiences in the consultation process. Past consultations have reached limited audiences and a broader engagement is needed if the SORP is to become more meaningful.

Turning to the SORP Committee itself, which is an advisory body to the SORP-making body, it was recognised that the committee structure needed review. No observers and a need for much clearer terms of reference of both the committee and the Chair was acknowledged. An annual performance assessment with a review of Committee members every three years was also recognised. The composition of the SORP Committee should change with membership reduced to a maximum of 16:

- Two to be drawn from each of the four jurisdictions, with at least one of the two representing smaller charities (eight members).
- Four members to bring additional skills and expertise including donor and government funder perspectives (four members).
- One member drawn from each regulator (four members).

Finally on non-statutory financial reporting by charities, like annual reports, it was recommended that the SORP requires that the other financial information reported should be consistent with that detailed in the formal accounts. The charity regulators should also consult with the sector to develop this guidance.

Crystal ball

Although the Charity SORP is not expected until 2022/23 it is clear that if the recommendations of the Oversight Panel are implemented, the next SORP will be significantly different. More simplified seem to be a key theme, particularly for small charities and the sector would welcome a more focused set of charity accounts which are easy to read so as to aid transparency. We wait to see how these recommendations are implemented and to quote Professor Gareth Morgan 'the SORP will be considerably more effective in future'.

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The Future of SORP

– Working Groups



The development of the charities Statement of Recommended Practice (SORP) is a continuous process. In October 2017 four working groups were set up by the SORP Committee to look at different key areas in the future of charity governance and reporting. The groups have each fed back on their findings throughout 2018 and the SORP Committee is due to consider how the recommendations are taken forward.

What are the groups and what progress have they made?

Smaller Charities

This working party focused on smaller charities in the sector (less than £250k income) and how to not only improve reporting but make it more focused in order to reduce the burden. The group presented its main findings and recommendations in June 2018.

Key points:

- There was strong support for allowing incorporated charities with income less than £250,000 to use receipts and payments accounts. Almost two thirds of the charitable companies in England and Wales could benefit. However a change in the law would need to take place before it could be allowed.
- The SORP Committee discussions on this point felt that receipts and payments would still need additional disclosures to show a 'true and fair' view under the Companies Act.
- Reading between the lines it does not sound like there would be much benefit in the end – but that may be too pessimistic.
- The group recommended greater use of technology with a potential 'Build your own SORP' tool for charities to use to give a clear picture of their individual requirements. But there was no suggestion of who would fund this tool.
- The groups did not look at the content of the trustees' report. Even though they recognised simplification would be needed in the future.
- Finally the group discussed the general difficulties in setting standards that are relevant and practical for smaller charities. The ultimate aim is to improve the quality of the accounts reporting in smaller charities, whilst understanding the limited resources at their disposal.

Tiered reporting

This group has suggested that there is a four tier reporting structure in place for charities.

The largest charities would be reporting additional information and disclosure similar to how UK PLC companies report in their accounts. This idea is complex as it introduces even more thresholds and variety of reporting planned to be tailored to the needs of both users and preparers of the accounts. It was also acknowledged that the different thresholds in different jurisdictions in the UK and Ireland would not be aligned with these tiers as they all have different variations on size for independent examinations and audit - so life could become very complicated indeed. The group reported its findings in June 2018.

Key points:

- The proposed four tier structure would require detailed information gathering as to how many charities fit into each potential tier.
- The potential to use the current thresholds of the Companies Act was dismissed as these were not designed for the charity sector and may be impractical.
- The new thresholds would also bring added complications that would only be understood by professional advisers, with different thresholds operating across different jurisdictions (Scotland, England, Northern Ireland etc.)
- There was however a strong indication that different tiers of reporting did provide benefits to end users of the accounts, and improvements in clarity of reporting.
- One solution was a principles based approach to the reporting between tiers and the level of transparency in each tier. Such principles could follow on from the International Integrated Reporting Councils 'seven guiding principles' framework. This was developed for corporate reporting but could be applied to charities.
- Fortunately for all, the conclusion was for further consultation and information gathering to take place before moving forward with any new tiers.

Transparency

This group is considering transparency in the sector, which is a key issue for many and reputational risks loom large in the background. What information is considered transparent, how is it identified in reporting, and is there any information missing from current requirements? The group reported in July 2018 with the following recommendations:

Key points:

- The group consulted a wide range of views and tried to build a consensus around the different ideas presented to them by various stakeholders.
- The group recommended that a potential 'key facts summary' could be produced for charities with bullet points and headline data to give users of the accounts a clear picture of what the charity does and how it undertakes those activities. But who decides what the key facts for each charity are? The possibilities could be very different from one charity to another.
- The groups suggested the key facts summary would include areas that were previously included on the summary information return (SIR), withdrawn by the Commission. The main difference would be that the key facts would be included in all charity accounts within the Trustees report. Yet another page of reporting to add?
- In addition, there would be a new 'roadmap' after the key facts summary that would direct readers where to find further information – with charities free to choose what to include here. This recommendation aims to make the charity report clearer and easier for readers to navigate, but could just make the report longer.
- These recommendations were considered against those previously highlighted by the smaller charities and tiered reporting groups above – with a potential additional burden that would need to be carefully considered.
- Finally, the group noted that use of technology and digital advances have changed the landscape on reporting practices. Any new advances in technology should be considered for future SORP guidance – this is a rapidly changing area for charities and recent developments with data protection and GDPR are just the beginning.

Governance

Finally, the governance group which assessed how the sector and charities are complying and addressing the new governance code reported its findings in October 2018.

Key points:

- Revisions to module 1 of the SORP were recommended to reflect recent updates in the charity governance code and the sector in general. In addition greater clarity in terminology should be added.
- The group noted that increasing the number of specific areas of reporting would potentially create a need for more supplementary guidance, and potentially increase the length of annual reports. More complexity was considered contrary to the aims of any future SORP. The dilemma was does this desire for simplified reports contradict transparency findings?

- A number of areas could potentially be 'signposted' in future annual reports as to where to find supplementary publications or information such as the charity website. This could reduce the length of reports – but then add to the burden in other areas such as the website.
- Any future SORP guidance should have an increased focus on risk, and for charities to focus on reporting their specific risks rather than following SORP mandated topics.
- The group raised the potential removal of the split in module 1 between small and large charities – but felt that at present the language and guidance was not clear enough to be easy to follow for all charities.
- More information should be presented on how trustees evaluated their own effectiveness, and any actions taken – this is controversial, and raises the questions of who defines effectiveness? Would this put people off becoming trustees?
- The frequency of trustee meetings and relevant attendance could be added to future requirements.
- The average number of staff calculation has been misunderstood in some cases and in many cases is inconsistent among charities. UK company law should be the basis.
- The group also recommended a review of the salary banding disclosure of salaries above £60,000 with a potential change to the starting point.

Conclusions:

The working parties have now all reported back to the SORP committee and all four regulators will meet to consider which actions and recommendations to take from the exercise.

Although it's unlikely that all recommendations will be accepted in detail, what is clear is that future change is on the way and charities should keep a close eye on upcoming developments and more importantly consultations so that they can feed their thoughts into the mix. The group's workings raise a number of questions as to future SORP – and what it actually is that the various stakeholders really want from reporting in the future.

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Service level agreements – should I have one?



On 29 March 2019 the Charity Commission published new guidance on charities connected with non-charitable organisations. Part of the Commission's focus is on charities that share and recharge costs with a trading subsidiary. In many cases the cost allocation or recharge between the two is at best, ill defined, and at worst, completely artificial. The Charity Commission recommend using written agreements or contracts to protect both parties, but a service level agreement (SLA) between the two entities defining the costs is often absent.

So, the short answer to the question above is yes, you should have an SLA. But first, let's look at what that means.

What is a service level agreement?

An SLA in this case should ideally be a written agreement between two entities that defines the relationship between them, and also lays out clear policies and guidelines on how costs should be allocated in each entity, and the method by which those costs will be recharged (and when). The agreement should be signed by the parent charity trustees and the subsidiary directors. It should also be reviewed regularly for any change in circumstances.

The methods for calculating and apportioning costs should be reasonably detailed where possible. Arbitrary figures or guesswork is likely to be looked at closely in any HMRC review.

Why might I need one?

What might be the risk if you don't do this? The problem is a balancing act between two possible issues.

On one hand, if the charity is allocating costs to the trading subsidiary that bear no relation to the trading activities, then HMRC can argue that these costs do not relate to the business and should be disallowed. This could create a larger taxable profit in the subsidiary.

That's no problem I hear you say, we will just Gift Aid that anyway! The danger is that if your subsidiary doesn't have sufficient reserves to Gift Aid all the larger amount, it will end up with a tax bill. The subsidiary must not pay over more than it can afford, and a large amount of disallowed costs could easily create a difficult situation.

On the other hand, the charity itself could be carrying costs that relate to its trading activities. This not only masks the performance of the trading activities by creating false profits but also creates the possibility of the

HMRC arguing that the charity costs are not being used for a charitable purpose – with a potential tax liability as a result (in the charity itself). Public perception of such items would also be very poor.

An SLA acts to clarify the position, and safeguard against possible enquiries in the future. It also forces trustees and management to think clearly about cost allocation while drawing up the agreement. In many cases you may be surprised at how the current process works, or whether it fairly reflects cost allocations between the two entities.

Other services that are shared

It's not just recharged costs that are affected by the relationship, there are other important considerations such as data sharing and GDPR, the use of brands and logos, and the use or access to premises and fixed assets. The relationships can be complex and any SLA should try to consider all potential shared factors to ensure that in future, any potential disputes or confusion over ownership is minimised.

The use of a SLA is covered in section 6 of the guidance. Furthermore, the new guidance includes an Appendix and a checklist (Checklist 1) which is aimed at all trading subsidiaries of charities. Trustees and management should read and complete this checklist to ensure that they have considered the trading subsidiary operations, risk and independence. Please see: <https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity>

Conclusion

Having an SLA is not a magic bullet, and any costs that appear to be artificially allocated will always draw attention. But it will always be a factor in minimising the risks involved in such relationships, and a useful management tool in understanding both the charity's activities and the real costs in its trading subsidiary. It's always best to be prepared. We recommend all trustees get acquainted with the guidance from the Charity Commission referred to above, especially section 6 on the use of written agreements.

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Charity Commission Inquiries

– don't let it be you!



How the process works:

There are many different ways in which a charity may enter the spotlight of the Charity Commission, either through general enquiry by the public or an individual connected to the charity, through requests to change governing documents, adverse media attention and let us not forget the duties of a charity with regards to serious incident reporting.

As a result, the commission opens many inquiries each year however it doesn't always publish statements about all its regulatory cases if they are not of sufficient interest to the public, or if the trustees are not aware that an inquiry is being opened.

The commission may decide that releasing a statement of inquiry would be beneficial if:

- There is significant public interest in the issues involved and the outcome, for example:
 - » There is media coverage of a charity or the commission's engagement with a charity on a particular issue.
 - » The commission wants to respond quickly to concerns over matters raised.
- It will increase public trust and confidence in charities through lessons to be learnt for others operating in the sector or for the donating public

An open inquiry will be linked to the charity's entry on the public register though there are instances when the Charity Commission would not publish an open inquiry or the outcome of the inquiry including where it would:

- interfere with or prejudice legal proceedings, due process or the effective outcome of the commission's investigation or the operations or investigations of other agencies
- be acutely detrimental to a particular individual or group of individuals, for example a risk to someone's personal safety
- unduly impact commercial sensitivities or give rise to national security issues
- cause severe prejudice to the charity and/or its beneficiaries
- prejudice or contravene the commission's legal duties.

Sector alerts:

In certain circumstances, the commission may find it more appropriate to issue a sector alert. Most recent sector alerts, published on the Charity Commission website, relate to the numerous types of fraud risk a charity may face and the articles published provide some useful insight into how a charity can best protect itself from fraud attacks. The most recent

article dated May 2019 discusses cyber fraud, an ever-increasing issue according to many of our clients. There are useful links to the National Cyber Security Centre (NCSC) toolkits for both small and large charities to help them protect against cyber crimes. The article also explains how charities can become accredited under the government Cyber Essentials Scheme (scheme launched in 2014 and backed by industry including the Federation of Small Businesses, the CBI and a number of insurance bodies enabling organisations to gain one of two Cyber Essential badges).

Common themes and messages to Trustees:

A brief review of the Charity Commission website as of May 2019 shows the outcomes of 11 inquiry reports this year and it is clear that certain themes are arising:

1. Governance, management and administration of a charity

Trustees are representatives of the charity they govern, and the charitable funds which they are responsible for and so they must be aware of and act in accordance with their legal duties at all times. The conduct of trustees can be a key driver of public trust and confidence in the charity sector and when the conduct of trustees falls below the standards expected there can be damage to the reputation of individual trustees, the charity and possibly the wider charity sector.

The trustees of a charity are collectively responsible for its proper management. They should act together, in accordance with the requirements of their governing document and the general law, and they must always bear in mind their over-riding duty to take decisions that are in the best interests of the charity.

2. Financial controls, management and application of funds donated to the charity

Trustees have legal responsibilities to keep accounting records, and to prepare an annual report and accounts with the appropriate level of external scrutiny. Trustees must also safeguard their charity's assets and take steps to ensure the charity is protected against financial abuse. Accounting records must be kept for at least six years (or a minimum of three years if a company charity). Trustees have a number of legal duties that must be met in relation to accounting and financial reporting. These include:

- Keeping 'sufficient' accounting records to explain all transactions and show the charity's financial position.
- Preparing an annual report and statutory accounts meeting legal requirements.

- Considering the need for a reserves policy, managing the level of reserves held and the disclosure of any reserves policy in the Trustees' Annual Report.
- Ensuring that the Trustees' Annual Report, accounts and annual return are filed on time with the Charity Commission where filing is required by law and, if the charity is a company, also filed with Companies House.
- Safeguarding the assets of the charity and ensuring the proper application of resources.

3. Duties and responsibilities of Trustees

Making decisions is one of the most important parts of the trustees' role and trustees can be confident about decision making if they understand their roles and responsibilities, know how to make decisions effectively and are ready to be accountable to people with an interest in their charity. There are 7 principles that the courts have developed for reviewing decisions made by trustees. Trustees must:

- act within their powers
- act in good faith and only in the interests of the charity
- make sure they are sufficiently informed
- take account of all relevant factors
- ignore any irrelevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make.

4. Safeguarding

Trustees are custodians of their charities. They are publicly accountable, and have a responsibility and duty of care to their charity which will include taking the necessary steps to safeguard their charity and its beneficiaries from harm of all kinds. It is essential that charities engaged with children or vulnerable people:

- have adequate safeguarding policies and procedures which reflect both the law and best practice in this area
- ensure that trustees know what their responsibilities are and
- ensure that these policies are fully implemented and followed at all times.

Trustees must therefore regularly review the steps that are taken to provide them with assurance on the fitness for purpose of their policies and the extent of compliance in the charity's practice with those policies. Any failure by trustees to safeguard children or vulnerable adults and to manage risks to them adequately would be of serious regulatory concern to the Commission and it may consider this to be misconduct or mismanagement, or both, in the administration of the charity.

5. Managing conflicts of interest

It is vital that trustees avoid becoming involved in situations in which their personal interests may be seen to conflict with their duties as trustees. Trustees must actively manage any conflicts of interest and there must be a clear record kept of any potential related party transactions. Individual Trustees should step back from or avoid any situation where a conflict exists or is likely to arise if it is clear the conflict cannot be adequately managed. As always, records of key decisions made, and the reasons for those decisions should be clearly documented in case of future scrutiny or inquiry.

6. Working internationally – risk management and monitoring

When working internationally, charities often operate through local partners rather than establishing their own delivery infrastructure in their country or region of operation. Working through or with a local partners can be an effective way of delivering significant benefits direct to a local community.

It does not, however, shift or alleviate responsibility for ensuring the proper application of the charity's funds by the local partner. That responsibility always remains with the charity trustees, forming part of their duties and responsibilities under charity law. When choosing local partners to work with, trustees must conduct adequate due diligence checks to ensure that:

- the activities they intend to carry out through their local partners are in furtherance of their charity's purposes
- their partners are and continue to be appropriate for the charity to work with
- the trustees have taken reasonable steps to monitor the use of funds to make sure that their partners can and will apply their funds for proper charitable purposes and the funds reach their partners and end beneficiaries.

To do this effectively, Trustees should put agreements between their charity and its partner organisations in writing, and specify the funds being made available, the timeframe for delivery of the project and measures of success. The agreement should set out clear requirements for reporting to the charity on progress and financial expenditure and the trustees should ensure an appropriate system of monitoring is in place. Admittedly, for a variety of reasons monitoring may not be easy and may present practical challenges. This is particularly so in certain parts of the world where access to the areas in which the charitable work is being carried out may be restricted. Failure to carry out proper due diligence and monitoring, particularly where the risks are higher, may mean a trustee does not discharge their legal duties and this failure may be regarded by the Commission as evidence of misconduct or mismanagement.

Further reading:

If you are not already aware of these publications we strongly suggest that you undertake further reading and please don't hesitate to contact us if we can assist in your understanding of these matters:

The essential trustee: what you need to know, what you need to do (CC3)

It's your decision: charity trustees and decision making (CC27)

Internal Financial Controls for Charities (CC8)

There is also a self-check-list for trustees which has been produced to enable trustees to evaluate their charity's performance against the legal requirements and good practice recommendations set out in the guidance.

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Risk management with an effective risk register



In order to achieve charitable objectives and safeguard charitable funds and assets, trustees should regularly assess the risks facing their charity and provide a framework for managing those risks. In this article we look at the use of a risk register in helping trustees identify the risks that apply to their charity – these should then be classified as those that are strategic or major risks and those that are less serious. We will refer to the benefits of managing risk with an effective risk register, and the typical weaknesses seen in practice.

The risk context for Trustees

Risks are ever present and will always be in the background affecting charity business. To successfully manage the primary operations of the Charity, key controls are employed. Risks can arise when controls are not employed or not working. Trustees need to mitigate risks in the key areas such as finance, security, governance, operations and compliance.

The risk management process needs to be tailored to the circumstances of each charity, focusing on identifying the risks the charity faces, especially its major risks and how each one will be mitigated. The risk policy of the charity outlines how risk management is undertaken:

- It encapsulates the key features of the approach to managing risk, detailing the risk appetite, how risks are captured and assessed, and a scoring method.
- It refers to the risk register and the risk review process, including which committee will receive updates and the opportunity for review.
- Key features to assess are the risk appetite (the level of risk you are prepared to accept), the risk owner (who is responsible for that risk and managing it) and the reporting process (communication of changes and updates to risks as they occur).

The risk culture of the charity, and the tone from the top, is an important aspect of introducing effective risk management. For example, charities have started to have their strategic risks listed on their trustee's meeting agenda to remind and focus on risk management throughout the meeting.

The Risk Register

You will need a method for capturing, identifying, assessing, and scoring risk and a list of controls already in place. Risks need to be assessed based on how you mitigate or manage them:

- Treat (take action like introduce a control)
- Tolerate (do nothing)
- Terminate (stop activity) or
- Transfer (e.g. insurance or use of agents/contracts).

For trustees, the risk register is a pivotal tool in the Governance and Risk Management framework. For the register to be meaningful, you will need a standardised methodology used across the organisation to make sense of a risk register. Thus it is normal for an organisation to have detailed guidance and training for risk owners so that risks are assessed using a standard scoring method and stratification. The resultant risk register should then be subject to regular review and update, with clear ownership and responsibility. Risks do change and there needs to be a process that records and monitors changes to ensure that actions are taken to effectively reduce risks.

The risk register itself should record all of the organisations risks and there should be a reporting mechanism to communicate these to the board. It does not have to be 'owned' by the board (especially as many of the controls in place to mitigate risk will be at management and operational level); but the board and management will want to know how effective the risk actions are. Therefore the reporting should show whether risk scores have changed, new risks added or risks which have been successfully closed. The board should be responsible for review and management of the key strategic risks of the organisation – these are the risks that they own.

The risk register is developed to:

- Help identify, capture, assess and grade emerging risks in terms of likelihood and seriousness (impact)
- Provide a useful tool for managing and reducing risks
- Demonstrate to the public and stakeholder partners that charity business is being managed effectively
- Assist trustees in undertaking and adhering to their duties, including making the Risk Management statement in the annual report where those charities and trusts are audited
- Ensure the communication of risk management issues to key stakeholders.

Typical weaknesses

Risk management can be seen as a separate exercise which needs to be undertaken rather than a fundamental part of running the organisation effectively. The risk register is purely a tool for recording the risk management process and reporting thereon. For any charity the risk register is a vital tool for trustees/management to use and understand. But common weaknesses that occur which reduce the registers effectiveness include:

- Risk register templates are often left untouched and unchanged from one year to the next
- Not all risks affecting the charity are identified
- Risk are not scored correctly and hence, not stratified for the appropriate level of attention
- Controls in existence chosen to mitigate risk are not used and the resultant action is not correct, applicable or appropriate. Or the controls are not proportionate to the risk and are overtly costly.
- Risk owners (responsible officers/staff) are not identified to monitor, manage and report on the risks
- A date for regular review is not identified (typically "ongoing" is used)
- Risk review is not part of a regular review cycle, say quarterly, termly or annually
- Risk discussions are not minuted as evidence of risk management
- Discussions do not include challenging current entries and suggesting options (including new risks, removing spent risks, rescoring current risks, giving more attention to higher risk areas)
- Lack of an annual review to confirm and summarise the register position and risk policy as part of the risk and control framework, and informing the annual risk management statement.

Many of these weaknesses are easily rectified, so make sure to check your register often and keep it up to date.

In summary

Typically, a sound risk management framework is driven by early and precise identification and grading of risks as they emerge, documented in a risk register to manage this process. From there you need buy-in and support from staff and management in terms of agreeing any actions to help lessen (mitigate) risks and of course, to monitor progress with that. Greater attention is needed to the use of risk registers as all too often they fall short of expectation, allow risks to not be addressed due to resource issues even when critical or fail to adequately highlight issues that may be vital to the charity's future plans.

We will be happy to field any observations or queries you may have on managing risks with an effective risk register at your organisation. This could include working with you to develop and improve your risk management process and use of the risk register.

Key links:

<https://www.gov.uk/guidance/how-to-manage-risks-in-your-charity>

<https://www.gov.uk/government/publications/charities-and-risk-management-cc26>

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Gift Aid Declaration forms – the use of full names



Over the past year there has been an ongoing discussion between HMRC and various charity stakeholders about the collection of additional information on Gift Aid Declaration (GAD) forms.

Until recently, HMRC only requested an initial rather than a full first name on the form. This means that in some instances it has not been possible for the authorities to distinguish between two people. For example, if father and son John and James Smith live at the same address, their GAD forms present the same names and addresses. However, one may be a taxpayer while the other is not; the non-taxpayer would not be eligible for Gift Aid and this would be incorrectly claimed by the charity.

A report commissioned by HMRC to look into issues around Gift Aid was published in September 2016 (<https://www.gov.uk/government/publications/charitable-giving-and-gift-aid-research>), and noted the following conclusions:

- when the report was written, around £1.16bn in Gift Aid was being claimed by charities from the Government each year
- it's estimated that 8% of donations had Gift Aid incorrectly added by ineligible donors, creating a tax gap of up to £180m a year
- it's estimated that 25% of the value of donations did not have Gift Aid added even though the donor was eligible, meaning that charities missed out on £560m of potential income.

To close the tax gap created by the incorrectly claimed Gift Aid, HMRC want charities to request more information on their GAD forms. This would enable HMRC to better match the details on GAD forms with people's tax records, and to confirm if the donor has paid enough tax to cover the amount of Gift Aid claimed by the charity.

The additional information considered by HMRC for mandatory inclusion consisted of full legal names, national insurance numbers and dates of birth.



Timeline of discussions

In June 2018, the findings of the research were presented to the Charity Tax Forum, and HMRC indicated that guidance would be clarified in respect of forenames on declaration forms rather than merely initials. At the following Charity Tax Forum in October 2018, HMRC confirmed that from April 2019 they would request the donor's first full name, surname and postcode, but that this change would not apply retrospectively. The Forum members raised their concerns, particularly in relation to small charities without enough digital capability, as well as the additional costs associated with the change, fraud implications and GDPR requirements. A further working group meeting took place in December 2018 to clarify the position and decide a way forward. Attending this meeting were members of the Charity Tax Group, as well as representatives from a number of large UK charities, such as the British Red Cross, the National Trust and Chester Zoo.

Concerns over new procedures

The charity sector's main concerns were from two perspectives – that of the donor, and of the charity itself.

From a donor's perspective, there are fears that legitimate donors might find the additional information requests intrusive and be less willing to complete the form, meaning that Gift Aid would reduce as a result. They may be put off by the additional time needed to complete the form. They might also be concerned about the use of their personal data if they provided their date of birth, and they might not know their national insurance number off by heart.

From a charity's perspective, additional cost may be incurred to collect the information, such as system changes and staff time. If GAD forms are completed online, the issue over legibility of someone's handwriting does not exist; however, manual forms sometimes cannot be easily read, so requiring only an initial is less problematic. At the meeting, Chester Zoo estimated that at peak times, requesting full names from Gift Aid donors could amount to 14 additional hours of queuing, and would need two more staff and two more payment points to reduce the resulting queue.

Charity groups also argued that requesting a full first name would not fully resolve the problem and reduce the amount of Gift Aid claimed incorrectly. The change may actually mean that charities incur additional cost. Other approaches were suggested, such as better reporting of the contact information and reminding donors to renew their older declaration forms.

Overall, attendees of the working group were opposed to the mandatory changes to GAD forms, but did agree that charities should encourage donors to give as much information as possible.

Conclusion

At the February 2019 Charity Tax Forum meeting, HMRC reiterated that GADs should include as much information as possible about the donor. It has been agreed that:

- charities should try to request full names wherever feasible
- authorities are seeking gradual improvement in the completion of first names on GAD forms, rather than a mandatory change from April 2019
- there is therefore no retrospective change occurring
- if charities hold a donor's full name, they are encouraged to give this data to HMRC
- charities are encouraged to document any actions they take to improve the collection of first name information.

The Government website – Chapter 3 on Gift Aid – now states that the declaration should show:

- the donor's full name – as a minimum HMRC will accept the donor's initial and surname
- the donor's full home postal address – as a minimum HMRC will accept the number (or name as appropriate) of their home and their full postcode.

It adds: "If HMRC finds the details on a declaration are not enough to trace the donor, they may ask the charity to get more information to check the claim. If the charity fails to get this information, it's likely that the declaration will be considered invalid."

It's fully understandable that HMRC wants more information about donors, so that they can clearly identify individuals and avoid confusion over names. However, it's hoped that any future changes to GADs decided by HMRC will not have a costly impact on charities going forwards.

Any charities claiming Gift Aid should prepare for these changes, with an expectation that more detail may be made mandatory in future.

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Smee & Ford

– Changes to charity legacy notification



Smee & Ford have a longstanding arrangement in the UK with the Ministry of Justice, to provide notifications to charities when they have been left money in wills. Earlier this year it was announced by the Chief Executive of HM Courts & Tribunals Service (HMCTS), Susan Acland-Hood, that the arrangement with Smee & Ford will end on 31 July 2019, with the aim of establishing a new service going forward. But the decision could have a significant impact on a large number of charities that currently use the company's services.

What is the current arrangement?

Smee & Ford currently provide a fee-paying notification service which allows subscribers to receive timely and accurate information on forthcoming legacies. Charities are notified of named legacies within weeks of probate. Set up more than 100 years ago, Smee & Ford has a team of specialists who read thousands of wills each week, to ensure clients receive the most up-to-date information. The Ministry of Justice provides data to Smee & Ford on a weekly basis to enable this process to take place.

Why change it if it works?

While the notification service was established in good faith, HMCTS has since found that it is not consistent with the department's legal duties. This is no reflection on Smee & Ford's service, but rather an assessment of HMCTS's legal position. It's understood that, for commercial sensitivity reasons, HMCTS is unable to elaborate on the nature of the legal duties that the current system was not meeting, although there have been some discussions on new GDPR and data protection regulations having had an impact on data sharing between organisations.

Why is the service so important to charities?

Many charities are reliant on the notification process to inform them of potential gifts or assets. Legacy income is by nature unpredictable – without prior knowledge of wills and probates, large amounts can be received without notice by a charity, meaning that there is no opportunity to factor this income stream into management accounts or to build fluctuations into budgets and forecasts.

Although the service has an annual subscription cost, it can save countless hours of charity time, and is particularly important for those charities which receive a large proportion of their income via legacies. Other sources of income may have reduced due to funding pressures in the sector, and therefore legacies, even if not received at the financial year

end, may ensure a charity can continue as a going concern. So the receipt of timely information can be crucial to many in the sector.

The Smee & Ford notification service is typically associated with a low level of errors, and is also an important fraud prevention mechanism.

The future

Legacies play a key role in funding charitable work across the country – more than 122,000 charitable bequests were contained in wills in 2017 alone – and HMCTS has stated that it is committed to ensuring a notification system continues. On taking the decision to end the agreement with Smee & Ford, Susan Acland-Hood said that HMCTS would like to design new arrangements for the future, with the help of charities themselves. A range of stakeholders' views will be taken into consideration.

A working group was set up, and the first meeting took place on 5 March 2019. It was attended by members of the Institute for Legacy Management, the Institute of Fundraising/Remember a Charity, the Association of Chief Executives of Voluntary Organisations (ACEVO), the National Council of Voluntary Organisations (NVCO) and HMCTS. The minutes of this meeting are publicly available, and the aim of HMCTS is to ensure that all decisions are communicated as widely as possible to keep all charities informed of developments.

Charities pay an annual fee to use the current service but the amount and the method of calculation of this fee (i.e. whether it is weighted depending on charity size) are not known. It has not been made clear whether the annual fee will change once new processes are in place.

Potential difficulties

Given the short six-month notice period, there is very little time to set up a new system from scratch. But if there is no system in place once the contract with Smee & Ford ends, it could have a significant impact on charities using the service.

The working group that met in March stated that it is looking to put in place interim arrangements to ensure charities continue to receive a notification service beyond July 2019 while options for the longer term are considered. HMCTS will be working closely with Smee & Ford over the next few months, to ensure disruption to charities is minimised and to better understand current business processes. They will be seeking their views based on their knowledge of the current service, to assess future options.

Conclusion

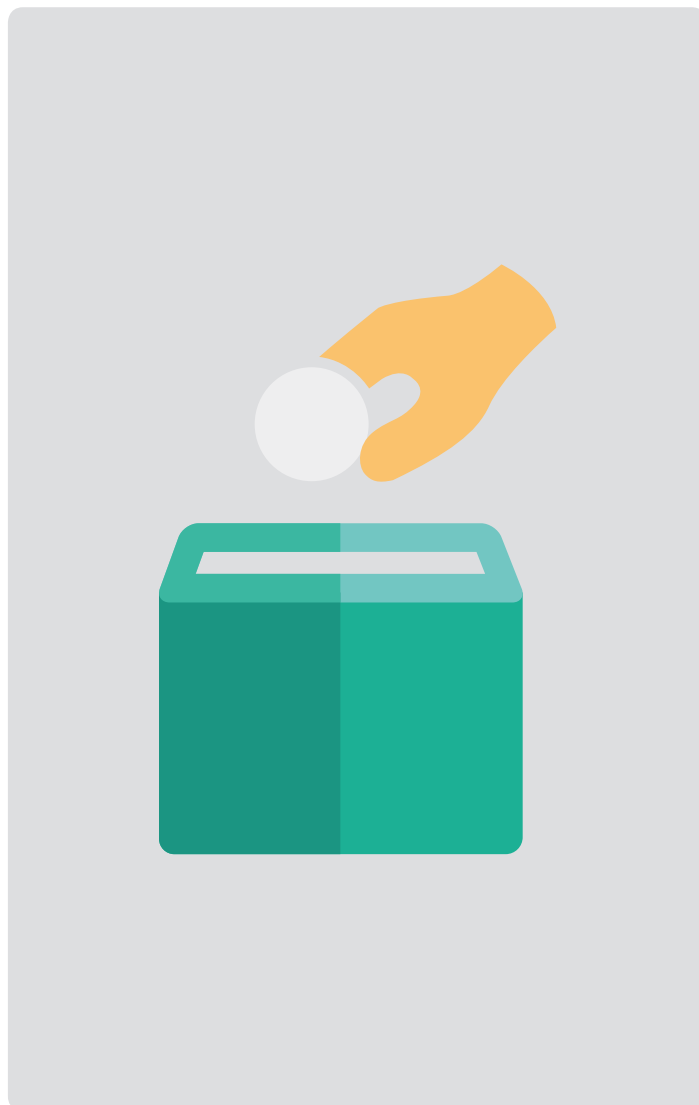
Not all charities subscribe to the notification service and some, for example churches and smaller charities, are not covered by the current set-up. In terms of future development, access to charity bequests via a public database would be valuable, and increasing public information and awareness of the service would assist fraud prevention and relationship building with lay executors. We await the outcome of future developments and will provide further updates as they become available.

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