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CHARTERED ACCOUNTANTS

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Charities and not for profit newsletter

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Welcome

Welcome to our summer 2020 edition of the Charity and Not for Profit Newsletter, which has been running as a blog series over the year on our website. This edition highlights what you should be thinking about amid COVID 19 and the implications on going concern in accounts – particularly from an audit perspective.

There is a greater need for auditors to document how they have concluded on going concern and documented challenging management's going concern assumptions and assessment in light of COVID 19 and the uncertainty this brings. Scenario planning, budgeting, forecasting and cash flow management are a necessity for all organisations to constantly review, adapt and change as the pandemic continues and react to the new 'normal'. The pandemic makes forward planning and budgeting very difficult as it is not possible to predict the future with any certainty and now more than ever there is a need for organisations to have strong Board and management leadership with good communication to react quickly and agilely as changes continue to happen.

Another aspect which also needs to be factored in is Brexit and how this will affect the organisation – suppliers and supplier chains, income recognition, compliance issues like VAT and GDPR, staffing and resourcing could all be affected. Unfortunately we have already seen charities close as a result of COVID 19 – Age Concern Suffolk being a recent example – and there are likely to be many more.

Other articles look at reputational risk and how to deal with media attention, reminder about corporate criminal offences and what this means for organisations particularly of processes and controls are being adapted as a result of the pandemic and what it means to be a trustee from a personal perspective.

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:

- What should charities be thinking about amid COVID-19
- Revised auditing standards – ISA570: Going concern
- Is media coverage inevitable for charities
- A trustees experience
- Corporate criminal offence – are you taking the right precautions?

Stop press:

Latest Government grants - Culture Recovery Fund

- Film and TV Production Restart Scheme, the Government announces a new £500 million scheme to kickstart film and television production struggling to secure insurance for Covid-related costs.
- Details also released on how £880 million of the government's £1.57 billion Culture Recovery Fund will support cultural, arts and heritage organisations. Grants of up to £3M will protect important cultural assets and ensure arts and heritage continue to play a key role in levelling up the country.
- British Film Institute, Arts Council England, Historic England and National Lottery Heritage Fund publish guidance and criteria for applicants.

VAT on ebooks and electronic publications

With effect from 1 May 2020, the VAT treatment of electronic books and other digital publications (subject to some exclusions) became zero rated. The new zero rating rules will apply to the supply of e books, e booklets, e brochures, e pamphlets, e leaflets, e newspapers, e journals, e magazines, e periodicals and electronic versions of children's picture and painting books.

Audiobooks and any e publication with more than 50% of its content allocated to advertising, audio and/or video content, are excluded and will continue to be standard rated (20%).

Filing Deadlines

Companies House have confirmed that businesses will be given an additional 3 months to file their accounts to help companies avoid penalties as they deal with the impact of COVID 19.

What should your charity be thinking about amid COVID-19

It's impossible to escape the new reality of the global Coronavirus pandemic – now officially titled COVID-19. For a large number of businesses and charities it simply cannot be business as usual. The effects of shutdowns, social distancing and pressures on the health system reach into the daily lives of all.

Some of you may be thinking what can be done to assist your charity in continuing its valuable work at this time, especially when some charitable services may be needed more than ever. How can you maintain charity output when finances and staff health may be at risk?

Unfortunately there are no easy answers to this question at the present time. However there are a few key steps below you can take to assess the current risks and try to reduce the impacts.

Before you start, you may wish to subscribe to our Content Hub to receive and be able to view guidance, support and advice in one place – our rolling summary of the Government support available is updated daily.

Risk assessment and business continuity

This is the first priority for all charities regardless of their sector. A brief risk assessment document should be produced for the Board and management looking at key areas. This includes financial risk, staff risks and risks to the activities you carry out. It also includes a look at your current business strategy and whether that now needs to be set aside in favour of a new short term plan to ride out the virus period.

All new plans will need a streamlined model for decision making – this is not a time to move slowly – but make sure all key stakeholders are involved.

Financial Risks

The first item on the finance agenda should always be cash flow. You should assess the risk to the charity over the next 6-12 months by looking firstly at the impact on incoming resources such as fundraising events, or charity activities that need to be cancelled. Secondly assess the working capital needs of the Charity in terms of fixed costs like premises and staff, and seek out potential costs that are saved from reducing activities or events. You can also delay investment or capital purchases if not critical at the current time.

You will want to look at what the costs are of providing services over the short term – are they now going to be in high demand, such as services for the elderly or vulnerable? How will these be funded and will that income stream continue?

Ultimately the goal is to produce some cash flow models for the next 12 months for a variety of scenarios, including worst case. It's vital to understand exactly what cash you need to keep the charity running.

Don't be afraid to talk to key donors and funders and see what their plans are. For example a number of grant making trusts are planning to ramp up their support for charities over this difficult period. In addition, don't make panicked moves around long term investments – you may need some to be cashed in for working capital needs but preserve your investment strategy where possible.

In addition, the Chancellor recently announced a number of additional support packages available to charities, including underwriting staff wages, and deferral of VAT payments. These measures could be a vital cash flow lifeline so make sure you factor them in. Further information is available at:

https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses

Most importantly speak to your bank, there may be ways to improve cash flow such as overdraft adjustments or changes to current borrowing. The Government has also pledged support through a number of different schemes. For smaller organisations this is through the Coronavirus Business Interruption Loan Scheme (CBILS). For larger, potentially, investment grade businesses this would be through Covid Corporate Financing Facility (CCFF) or the recently announced Coronavirus Large Business Interruption Loan Scheme (CLBILS) for those with turnovers over £45m.

Additional details on all of the governments support is available on our rolling summary. Make sure you review all of the different possibilities to get the right targeted support for your charity and avoid unnecessary delays in getting on top of things.

On the 8th April the Chancellor also announce a specific cash pot for charities worth over £750m. This funding will support frontline charities across the UK – including hospices and charities helping domestic abuse victims. Of the total £360m will be directly allocated by government departments, while £370m will go to smaller charities, including through a grant to the National Lottery Community Fund, and £60m of that will go to Scotland, Wales and Northern Ireland. This is a significant boost to charity funding and as soon as more information is available our rolling summary will have all the details.

Don't wait too long to explore the options. In addition, keep looking at updates from the government and public funders about what help might be available – such as the governments planned grants schemes.

Staff Risks

Your staff are one of your key assets and its vital to keep them safe and well throughout this period. Consider remote working options where available, and having a specific plan of action to follow should staff fall ill. They will need contact and monitoring whether working remotely, self-isolating at home, or working on the essential frontline for activities and services.

Communication will be key to this, in a time where many staff will be anxious and worried. Consider what flexible arrangements can be made for them wherever possible.

At all times follow the key guidance from the governments public health teams. This is updated regularly:

https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19

Activities Risks

Take a look at all of the charities main activities from a virus perspective. If an activity involves unnecessary contact or risk then think carefully – it's always better to delay or cancel than risk the health of both staff and the service users themselves. However, charities being at the frontline may well need to continue to provide services and support through these difficult times and you need to plan how to achieve this safety for all.

Some key activities for fundraising, or larger events may be need to be cancelled. Look in detail at contracts and payments made before you cancel, and talk to venues and suppliers to see if anything can be done around refunds or cancellation penalties.

Also consider whether demand for your activities is likely to rise. Some charities may see large draws on their services if working closely in communities or with vulnerable people. In this case you may divert cash flow and resources from other activities to support the demand. But as stated above, always consider any risks to staff and service users.

Don't forget that decisions you make now may have long term effects on the charity, not just financially, but in terms of its reputation and output.

Careful risk assessment in the short term and involvement of Trustees, management and stakeholders is undoubtedly the best way to make sure those decisions take the best possible route, rather than unintended consequences.

Governance

Finally, you may need to think about practical issues like how to the organisation. What does your governing document say about electronic communications – does it allow for telephone or video conferencing for its meetings; or for decisions to be taken by written resolutions (so the verbal meeting can be held and recorded in writing perhaps?) you may have practical issues around how to run and convene meetings and also the AGM to think about and plan your governing document will specify how many and how often meetings should be held to help you try and manage this process.

Recent Charity Commission guidance looks at this and also considers reserves and restricted funds and how these may be used. An aspect of the financial risk, cash flow and scenario planning referred to above will be about spending reserves and the Charity Commission guidance implies this could be an instance where these would be appropriately applied:

https://www.gov.uk/government/news/coronavirus-covid-19-guidance-for-the-charity-sector

Above all, stay safe and well.

This article was written by Charity Specialist Michael Cooper-Davis. If you have any questions regarding this article you can contact Michael using the below details.

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Revised Auditing Standard – ISA570: Going Concern

In September 2019 the Financial Reporting Council (FRC) issued a revised International Standard on Auditing – ISA 570, Going Concern. This will be applicable to all audits for periods commencing on or after 15 December 2019. This ISA was updated as a response to many high profile corporate failures such as BHS, Carillion and Thomas Cook in which the auditors faced criticism that they did not do enough to highlight concerns about the future viability of these companies prior to their collapse.

Since the start of 2020, the entire world has become a different place. Within a matter of only a few months, Coronavirus (COVID-19) has swept across the world, shutting down nations, closing borders and halting the economy. Schools and public places have closed, events have been cancelled, and members of the public have to abide by new social distancing and isolation rules. The UK Government are responding with various packages of support, but the long term effect of this is currently unknown.

This article will consider the revised ISA 570 and the impact of this on auditors and charities. This is particularly relevant today as charities look to the future and assess the impact of COVID-19.

COVID-19 and the impact on Going Concern assessments

The FRC has issued several briefings in response to COVID-19 and is clear that organisations, and audit committees, must understand it is vital that auditors have sufficient time and support from management to document their assessment and to update these as changes occur. The advice and support from the Government is changing daily as well as the requirements on organisations, which means that management will be updating and revising their going concern basis. Auditors have to revisit their work in this area – from closing venues, cancelling events to self-isolation of employees – these are challenging and evolving times. Future forecasts will need to flex and probably include a variety of potential scenarios occurring in order to assess the impact of COVID-19 on the ability of the entity to continue to operate as a going concern.

Some factors that entities may need to consider due to COVID-19 include:

- What impact are the lockdown measures having on demand for the charities services/funds?
- Can the charity/entity continue to operate if staff are not able to be physically present and, if so, for how long?
- What other impact has COVID-19 had to date?
- Can staff work remotely?
- Have any restrictions been imposed which have reduced or suspended activities? Is the entity able to continue to provide services as normal or adapt?
- Will the entities insurance policies cover any losses arising from the coronavirus and if so, how long it might take for a pay-out to be received?
- Are there additional costs to account for as a result of the pandemic, for example, increased cost in supplies, redundancy costs, restart costs once the crisis is over?
- Are there any anticipated cost-savings to account for while in lockdown, for example, reduction in travel, office costs, furloughing staff?
- If the lockdown is having a significant impact, how long can the entity/charity survive?

ISA 570 – What has changed and why?

The financial reporting frameworks applicable in the UK generally require the adoption of the going concern basis of accounting in financial statements, thus confirming that the entity is able to continue in existence for at least 12 months from the date of signing the Audit Report. The going concern basis will not be appropriate where management intends to liquidate the entity or to cease trading, or has no realistic alternative to liquidation or cessation of operations.

The revised ISA has more requirements and guidance for auditors in assessing whether a material uncertainty related to going concern exists; and the appropriateness of management's use of the going concern basis.

The revised standard requires:

- The auditor to more robustly challenge management's assessment of going concern to thoroughly test the adequacy of the supporting evidence and evaluate the risk of management bias;
- A new reporting requirement for the auditor of public interest entities, listed and large private companies to provide a clear, positive conclusion on whether management's assessment is appropriate, and to set out the work they have done in this respect; and
- A stand back requirement to consider all of the evidence obtained, whether corroborative or contradictory, when the auditor draws their conclusions on going concern.

The definitions in relation to what constitutes a 'material uncertainty' and a definition of the term 'management bias' are as follows:

Management bias:

A lack of neutrality by management in the preparation of information;

Material uncertainty related to going concern:

An uncertainty related to events or conditions that, individually or collectively, may cast significant doubt on the entity's ability to continue as a going concern, where the magnitude of its potential impact and likelihood of occurrence is such that appropriate disclosure of the nature and implications of the uncertainty is necessary for:

I. In the case of a fair presentation financial reporting framework, the fair presentation of the financial statements; or

II. In the case of a compliance framework, the financial statements not to be misleading

Impact on the audit approach

There is a greater need for auditors to document how they have challenged management's going concern assessment. This requires a detailed review and assessment of assumptions used, the risks behind those estimates within the budgets, cash flows and forecasts, how this fits in with the auditor's knowledge of the business, the wider economy and therefore the appropriateness of the going concern basis. This means that there will be a significant drill down and rigorous testing undertaken on how management has demonstrated its going concern status and the evidence provided to the auditors.

In practice for many auditors and clients there may be little difference to the work undertaken where they have followed best practice and been robust in carrying out their going concern work. However the ISA is very prescriptive on the requirements to be documented and inevitably there will be additional documentation required to support the conclusions on the audit file. The 'stand back' requirement, which requires the auditor to consider all the evidence obtained before concluding on the going concern basis needs to be formally documented.

Impact for Charities

The amount of additional work this will place on charities will very much depend on custom and practice and will vary depending on the size and complexity of the organisation, its income streams and their predictability and risk involved. However, as indicated above, it will inevitably involve additional time and cost for both charities and their auditors to a varying degree.

All entities can continue to expect discussions with their auditor at both the planning and closing meetings, but perhaps much more focus at the planning meeting than in the past. For charities with significant estimates in their budgets and forecasts, auditors will continue to need to assess the evidence provided on risk areas, like new and ongoing grants or contracts, copies of the legacy book and any significant correspondence post year-end, confirmation of income from memberships, donations income projections and assumptions, details of investments decisions or disposals and evidence of strategic management decisions within Board meeting minutes.

As already noted, such forecasts and budgets may well need to demonstrate various scenarios to show how the entity would survive regardless of the outcome and particularly so as a result of external factors – most recently the impact of COVID-19.

Auditor reporting requirements

Financial statements will refer to the going concern assessment in the Directors / Trustees' Report, in the accounting policies and in the Audit Report. All key messages and conclusions must be consistent throughout the financial statements. Management have to assess the going concern basis and provide evidence to support this 12 months from the signature date on the accounts – a shorter period is not sufficient evidence.

Where there is no material uncertainty in relation to going concern the Audit Report will include:

- A statement that the auditor has not identified a material uncertainty that may cast doubt on the entity's ability to continue as a going concern for a period not less than 12 months from the date of approval of the financial statements.
- A conclusion that management's use of the going concern basis of accounting in the preparation of the entity's financial statements is appropriate.
- For PIES, listed entities and those applying Corporate Governance Code, further disclosure requirements on how this assessment has been evaluated.

Where the auditor considers that there is 'material uncertainty related to going concern' to be included in the auditor's report, or that it is necessary to issue a qualified, adverse or disclaimer of opinion in respect of matters related to going concern, they have to consider their requirements to report to a regulator or authority outside of the entity and how to manage this reporting requirement.

Summary

The revised ISA570 on Going Concern requires more reporting by both auditors and charities in the UK to ensure that the underlying budget assumptions and forecasts are realistic and free from management bias and that they are a realistic representation of events, influenced by both internal and external factors, occurring after the year-end.

Charities should not forget their responsibilities for serious incident reporting if there are any issues related to the going concern of the organisation. For further details, please see:

https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity

As always, please talk to your Price Bailey contact if you have any queries or concerns about matters raised in this article.

This post was written by Suzanne Goldsmith, Senior Manager at Price Bailey. If you have any questions on the above or are considering making a claim, please contact your usual Price Bailey point of contact or Suzanne using the details below.

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Is media coverage inevitable for charities?

Charities being in the headlines is becoming more commonplace. Journalists are always looking for new and interesting stories that are original and even scandalous which therefore keep their editors happy as readership levels increase. Therefore anything which attracts readers is of interest and charities can be targets for their stories because of the public interest and wide variety of views on the sector and its work.

Therefore all charities should be prepared with a media plan when the inevitable happens. If you are not prepared now on how to deal with the media when the approach comes, then it will be too late to react.

The Editors' Code of Practice (produced by IPSO) does not require journalists to contact individuals or organisations before their story is released. However it does require that editors 'take care not to publish inaccurate, misleading or distorted information or images'. Therefore as a result it is quite common for journalists to approach organisations for comment before they publish their article.

So when you are approached on a Friday evening on an article that will be in the Sunday papers, what is your plan? It is quite common that where a press story is released by one particular paper then another tabloid will pick up the same story and so the coverage will increase dramatically.

The usual pattern nowadays is that the charity is approached and:

1. Either makes a comment, which may not always help the situation, but may help put across an explanation and feedback and any such comment needs to be carefully managed;
2. Makes a comment of 'no response' which is not advisable as such comments are reported in the press and tend to be reported in a way which gives a misleading impression of the charities approach or if the story is even true or not; or
3. Chooses not to respond to the approach at all. Some charities view silence and waiting for the storm to pass as their course of action.

So which approach is best and how will you manage the situation? Often the press article will be followed by a social media storm, with the charity issuing a statement and then the furore all then dies down and the charity then assess the situation and damage to its organisation. However, if your organisation has managed its media communications, assessed the risks of how and what it could be criticised on, then the outcome does not have to follow this path.

The RNLI

A recent example, In September 2019, involved RNLI and a headline on its international work abroad after announcing 100 job cuts in the UK. The issue concerned spending UK donor money internationally to save lives whilst having to announce it was scaling back UK operations and how this was scandalous to keep this from donors. Interestingly the RNLI choose option three, waited for the social media storm to break (which was incredibly critical of the charity) and was gaining pace and then reacted. Many comments on the social media platform were about cancelling donations.

Their media plan was to defend their position in a tweet and not to apologise for their actions – which was backed up by their reporting and communication on their international work in their accounts, website, social media and newsletters. The charity stood by its strategy and defended its position, and refrained from responding on every negative comment to just positive messages and signposting to its international work. This communication strategy had to be very clear and had to ensure that the communication from the top to that responding to the media comment was consistent and on message. This means that there needs to be a very clear line between the Trustees, CEO and senior management and the responses given to the media. Their communication plan worked and the RNLI gained increasing support from individuals, including celebrities and other charities, on social media who were offering donations as well as praise. The good outweighed the bad criticisms quickly over a few days. Interestingly the RNLI personally wrote to every celebrity to thank them for their support. The RNLI will have to assess the financial cost of this media storm – not only on the most immediate aspects on new and cancelled memberships, but also the longer term, such as galvanising potential income streams which may have been lost as a result from legacies perhaps.

Publicity

If your organisation had suffered a similar attack over a weekend on social media would you have been ready and prepared with your statements and how would the situation be managed? Some of the reasons behind turning the tide from bad to good on social media were around the response rate of the RNLI and tackling the situation early, on a Sunday morning. There are some key messages to take away – being very clear on your strategy, consistent in your communications and prepared to defend your stance.

This article was written by Charity Partner, Helena Wilkinson. If you have any questions regarding this article you can contact Helena using the details below.

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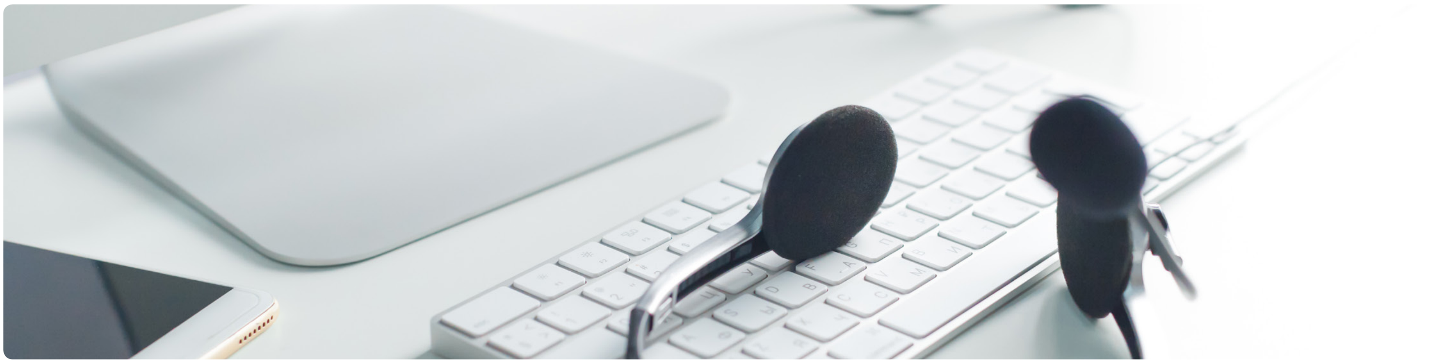
A trustee's experience



Price Bailey's ethos, 'It's all about you', is based on building relationships with trustees to provide the advice and assistance needed to enable them to focus on delivering their strategy. To help us gain a better perspective on the experiences of trustees, we interviewed Alice Marshall-Chalk, Manager at Price Bailey, to provide us with some insight on her own experiences as a trustee of a local charity.

What drove you to get involved and become a trustee of a local charity?

Initially, it was an 'email to all' from a colleague at Price Bailey. "Is anyone interested in helping a local charity by becoming a trustee?"

I had recently decided to specialise more in the not-for-profit sector as part of my role at the firm and saw an opportunity to become involved in a charity which I had an interest, so I replied "yes" to the email. Having just had a change in personal situation too, I had plenty of time on my hands and felt that this could be put to good use in my community.

I was put in touch with the chair of the charity and we arranged for me to pop in one Saturday when they were having a training session. Everyone was very welcoming and I met trustees and staff as well as volunteers. We talked about the charity's objectives, what they were looking to achieve and the difference their activities made to people's lives. I felt keen to be involved, despite being unsure how I could be of assistance, having never been a trustee before.

How did you approach learning about the organisation?

I was opted onto the board at the next trustee meeting, and became part of the finance committee too, given my experience at work. Following my induction, I started to attend the eight-weekly meetings. At first, I was very nervous, I was unsure of how to contribute, and mainly just listened and took notes. Sometimes others talked in abbreviations and I didn't know what they were referring to. I was not sure if that was due to not fully understanding the organisation yet, or not understanding my role as trustee. In hindsight, both applied.

How has your experience so far allowed you to contribute to the charity as a trustee?

While I was still learning about the charity and my role within it, the board stuck with me, so to speak, and slowly I grew in confidence and started to be able to ask questions when I needed clarification. I got to grips with what we were doing, how we were doing it, what was going well and what worried us. I started to refer to "us" when talking about the organisation, rather than "you". I felt more and more attached to the cause and that I could contribute in my own way.

We have a diverse skill set on the board, with a diverse range of characters too. Some are more forthcoming than others, some more vocal, some more meticulous, some more challenging, and we all bring expertise from our respective professional sectors: health, service delivery, commissioning, business, finance. In some meetings, for example when we are talking about service delivery, my opinion is that of a 'lay-person', I just see things from an outsider's perspective which helps bring balance to the discussion, and I rely on the professionalism of those who understand to make informed decisions.

In other meetings, we talk about financial reserves, income, sustainability and planning for the future. This is where I lead more on the discussions to help my non-financial colleagues understand the challenges and risks we need to make decisions on. Then when it comes to that time of year to draft the financial statements, well, I'm in my element! I apply everything I know from my 'day job', giving my all and dedicating time to ensuring that the financial statements are compliant but also reflect well on the organisation.

What has been the greatest challenge you have faced so far as a trustee of a local charity?

I would say that the hardest thing about being a trustee is also its advantage. Sometimes all you want to do is get on with the work yourself, to help and to be hands on. However that is not a trustee's role. If I were to be too involved, the whole essence of being a trustee, that sense of detachment and oversight, would be lost.

So for me, it is a balancing act. I aim to spend time on the charity's premises when covid allows, with the staff and volunteers, so that they know who I am. I am reliable, I can lend a listening ear, and I understand the quirks and characteristics that underpin what we do. On the other hand, it's about being strategic, bringing my personal skill set to the table and applying everything I have learnt from my professional world and from those around me. It really is amazing what we can do together.

How would you sum up your journey as a trustee so far?

I have been in my role for a few years now. Things have changed somewhat in my personal life which means I have less time to dedicate to my trustee role compared to when I first started out. However, I have learnt that asking questions is the most valuable thing I can do as a trustee. Have we thought about this? What are the VAT implications of that? Have we considered the impact of stopping doing this? Why have costs reduced when we are trying to grow? Why haven't we considered that aspect? Even the 'silly' questions can sometimes bring about some important discussions between management and trustees, and I have learnt not to be afraid to ask.

I have never stopped learning in my role, whether that be from fellow trustees, staff, beneficiaries and volunteers. I do not believe you can be taught to be a trustee – it is all about the experience you have gained, and it is that experience you bring to the table. There is plenty of guidance – like CC3 from the Charity Commission, which informs you of your roles and responsibilities – but nothing compares to actually being involved as a trustee.

Charities are often looking for new trustees, so if you are interested, this is a great way to become involved in your community.

If you are considering becoming a trustee and not sure what the best option is for you, or have any questions, please contact Alice Marshall-Chalk on the details below.

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Corporate Criminal Offence – Are you taking the right precautions?

The Corporate Criminal Offence legislation (CCO) took effect across the UK back in September 2017.

However, since then, several charitable sector groups have warned that charities are either unaware of the impact of the legislation, or wrongly believe that it does not apply to them due to the use of the word 'corporate' in its title. Unfortunately, all incorporated charities (but not charitable trusts) have to abide by the legislation. In this article, we'll take a look at what the CCO means, and what measures you need to take to reduce the risk in your charity.

What does Corporate Criminal Offence cover?

The new legislation intends to cover tax evasion – both in the UK and abroad. It's a very broad piece of legislation. Still, its overall goal is to prevent the facilitation of tax evasion through UK entities (including charities) – and simply being unaware that this tax evasion is occurring is not a sufficient defence.

The offences catch not only the taxpayer evading tax, but also any 'associated person' who assists them in the evasion, and any entity (such as the charity itself) that failed to prevent this assistance.

Examples of what might be an offence under the CCO include:

- Employees changing or adjusting the amounts on invoices to facilitate a reduction in tax for the customer.
- Employees assisting a supplier in evading tax by paying cash in order to 'save the VAT'.
- The HR team conspiring with an employee to allow them to be seen as self-employed and avoiding ERS NI taxes; or paying cash in hand so as to save on taxes and NI.
- An individual providing a charity with a donation which has associated benefits and conditions attached to it that would typically prevent relief from git aid; and the charity issues a receipt for the 'donation' and accepts the signed gift aid declaration knowing it's a payment for services

There are numerous ways in which the CCO could catch out charities and their employees, and the charity itself will be liable. In some cases, employees may think they are doing the right thing by the charity such as the 'VAT saving' example above – whereby the charity has saved VAT but has also assisted a supplier to avoid declaring income.

What are the penalties for a Corporate Criminal Offence?

The penalties can be severe – fines for breaching the act are unlimited. HMRC has been conducting in-depth CCO investigations since early 2018, including dawn raids on office premises, and interviews with staff on their knowledge of the CCO and the current procedures to see if reasonable prevention steps are in place.

In addition to fines, public conviction and the resultant media attention would result in potentially substantial reputational damage for any charity.

So what can charities do about the Corporate Criminal Offence?

The only accepted defence for a charity against the offences included above is if the charity can demonstrate what the act describes as 'Reasonable Procedures'. Equally, if such procedures are not present and the charity can show it would be 'unreasonable' to have such procedures in place, then this can be accepted as a defence – but it is a hard one to prove.

What are reasonable procedures?

The guidance from HMRC on the act lays out what it considers to be the six fundamental stages of having reasonable procedures in place. These are:

1. Risk assessment – carrying out the initial risk assessment is a key part of the procedures. Highlighting areas where the charity may be vulnerable to instances of tax evasion, and considering all forms of income and expenditure in detail. This assessment should be documented and discussed by the Trustees and management at board level.
2. Proportionality of risk-based prevention procedures – There must be consideration of the nature of the charity activities, and what are reasonable steps to take that do not interfere or drastically impact those activities. At this stage, formal procedures would be produced and implemented.
3. Top-level commitment – Taking the risks seriously and understanding the impact of the offences really should be led from the top. The involvement of the board and senior management in design, communication and implementation is key to leading by example for all staff and stakeholders.
4. Due diligence – The charity should consider due diligence in all aspects of its operations already. Who do they work with and in particular, who is working on their behalf? Taking steps to ensure due diligence is carried out at the early stages gives the charity a good chance of prevention.
5. Communication (including training) – All staff should be aware of the procedures and be given training on how the offences occur and how to spot the risks. Some staff can be unaware that what they are doing is helping to facilitate another person's tax evasion.
6. Monitoring review and testing – The charity should take steps to monitor its procedures and controls when implemented, and make sure they are adhered to by all staff.

Conclusion

If your charity can take the steps above to increase awareness and close down the opportunities for tax evasion, they will have a solid defence against the fines and penalties that can be levied under the CCO act.
In reality, many charities will already have some or many of the steps above as part of their usual controls and risk assessment – so it may just be that some additional tweaks along with staff training is the best approach.

However, you must always make sure your procedures and discussions are documented. Failure to do so may mean a failure to defend the charity in the event that an offence ever occurs.
This post was written by Michael Cooper-Davis, a charity finance specialist at Price Bailey. If you would like to know more about anything discussed in this post then please contact Michael using the details below.

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