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Charities & Not for Profit Newsletter

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"Trust in charities, 2018"

Populus has carried out research for the Charity Commission, published in July 2018 about how the public views charities, what this means for the sector and how trust can be increased. The research showed that charities are trusted less than the average person in the street, however the sector wants to change this perception. The previous research was in 2016 and public trust has not improved since then.

The benchmarks of a charity's trustworthiness are not only compliance with charity law, but also showing how they are accountable for:

- What they have achieved in relation to their objectives;
- How they have managed their resources responsibly "good stewardship";
- Making sure that their organisational culture and behaviour supports this charitable purpose.

The report findings include:

- Those aged 18 - 24 are more likely to trust charities than those aged 55+
- 58% of people think that charities play an essential/very important role in today's society

- By sector group doctors are the most trusted, followed by the Police, the Man/Woman in the street. Charities come next, followed by Social services, private companies, banks, local Council, newspapers, government ministers and MPs

When asked which quality is most important for trust/confidence in charities 37% said ensuring a reasonable proportion of donations make it to the end cause and 36% said making a positive difference to the cause they are working for.

The 2,059 adults surveyed were asked about what makes them decide whether or not to trust a charity and the most important matters (scored out of 10) were:

- Being transparent about where the money goes 8.8
- Being true to their values 8.5
- Efficient use of resources 8.4
- Being well-governed and well-managed 8.3
- Demonstrating a positive difference 8.3
- Being capable, expert and skilled 8.0
- Being entirely volunteer run 6.0

The full report can be accessed [here](#).

Contents

"Trust in charities, 2018"	2
2018 Charity Commission annual return and detail updates	3
Corporate Criminal Offence	4-5
Charity Commission Inquiries	5
Safeguarding update	6
Draft code of ethics	6
Updated HMRC Guidance on Grants versus Consideration for a Supply	7
Digital Code of Practice	8
Fundraising levy - update	8



Judith Coplowe - Partner

2018 Charity Commission annual return and detail updates

We reported in the October 2017 charity newsletter that changes were afoot for the 2018 return and these should be in place by the end of August. This includes a change to the “update charity details” section. Charities are required by law to keep their details up to date (and not just submit amendments annually via the annual return).

Following GDPR, the Commission is required to advise individuals if any of their personal information is updated on the charity register and the intention is to do this via email. In due course the Commission will therefore be asking charities to check that their information is up to date and make sure that they have an email address for all trustees, or ask them to confirm that they do not have one.

Where a trustee has provided different contact details for multiple charities that they are involved with, they will be asked for their primary residential address, which will be used across all of their charities. Any trustee updates will thereafter be shared across all of that trustee’s charities.

The contact for a charity will have to be a named individual, it will no longer be possible to use a corporate body.

As regards the 2018 annual return, charity trustees have received email reminders about the new questions that will need to be answered.

Questions that might require more analysis with regard to expenditure outside England and Wales are:

- When spending money outside England and Wales, did your charity transfer money outside of the regulated banking system?
- What methods were used (cash courier, other charities/NGO/NPO, money service business, informal money transfer system, online payment method e.g. PayPal or other method) and what was the value?



- Does the charity have controls in place to monitor overseas expenditure?
- Are the trustees satisfied that the charity’s risk management policy and procedures adequately address the risks to the charity arising from its activities and/or where it operates?

Questions that might require more analysis with regard to income from outside England and Wales are:

- During the financial period for this return, did the charity receive income from outside the UK?
- Select the countries the charity received income from or select unknown/don’t know.
- What is the value of income per country? For each country specify the source and amount of income from: overseas governments or quasi-governments, overseas charities/NGOs or NPOs, other overseas institutions e.g. private company donations, individual donors resident overseas or unknown/don’t know.

The Charity Commission recognises that analysing overseas income and expenditure by country may be onerous and require charities to change their accounting procedures, so these two elements will be mandatory for the 2019 return.

There will also be new questions about staff salaries and benefits and we await the release of guidance on those points.



Corporate Criminal Offence

The Criminal Finance Act 2017 came into force in September 2017 and with it saw the introduction of the Corporate Criminal Offence (“CCO”).

This new legislation provides HMRC with new powers to criminally prosecute and hold corporates accountable for the activities of persons acting on their behalf where they facilitate tax evasion and where they have failed to implement relevant preventative measures.

How does an offence occur?

In order for an offence to occur there are three stages:

1. Criminal tax evasion must have taken place by a taxpayer (which could be in respect of UK or foreign taxes);
2. An associated person (e.g. an employee or agent acting on behalf of the organisation), whilst acting in that capacity has criminally facilitated the tax evasion; and
3. The organisation failed to prevent the associated person from committing the facilitation

Who is caught by this legislation?

The legislation is aimed at organisations that have been established as companies or partnerships including LLPs. This also includes charities that have been set up as companies limited by guarantee including community interest companies, charities established either by royal charter or as charitable incorporated organisations.

Associated Persons

This has a deliberately wide definition which captures any individual that provides services

for or on behalf of the organisation. It therefore could include:

- Staff
- Sub-contractors
- Group companies
- Agents
- JV partners
- Corporate trustees

What is the impact of this legislation?

If an organisation is found guilty, under these new powers there would be a public record of the conviction and potential reputational damage. Additionally, they could be subject to any or all of the following:

- unlimited financial penalties;
- confiscation orders or serious crime prevention orders;
- exclusion from public procurement processes; and
- disclosure to professional regulators.

Prevention

For HMRC to bring criminal charges against an organisation; the organisation must have failed to prevent the associated person from facilitating the tax evasion. Implementing suitable prevention measures will become an essential aspect of an organisation’s defence against prosecution under these rules.

HMRC in their guidance have outlined the steps organisations need to implement in order to remain compliant with this legislation. The steps include:

- Undertake a **Risk Assessment** of the

organisation to understand where the exposures to tax evasion could occur;

- Introduce controls that are **Proportional** to the risks identified;
- Ensure **Top Level Commitment** from the management to flow throughout the organisation instilling a culture that emphasises that tax evasion is not acceptable;
- Conduct **Due Diligence** procedures as required on persons acting on behalf of the organisation;
- Once policies and procedures are implemented there should be **Communication and Training** to ensure full understanding of the new rules; and
- Organisations should continue to **Monitor and Review** the risks they face and update their policies and procedures as required.

How we can help

Undertaking and documenting a comprehensive risk assessment will form the basis of your defence against prosecution. This should be complemented with the implementation of policies and procedures which demonstrate an organisation's commitment to preventing the facilitation of tax evasion.

At PEM we are able to undertake the risk assessment and provide clear written policy documentation to ensure compliance with this legislation.

If you have any further questions regarding any of the issues raised above, please do not hesitate to contact Anil Arora (aarora@pem.co.uk).

Charity Commission Inquiries

The Commission has recently reported on a number of cases, aside from The Presidents' Club that has made national headlines, which they have been investigating. There are lessons to be learned for trustees and the charity sector from all cases, including the following.

Love Saves the Day

Love Saves The Day (LSTD) was a CIO (charitable incorporated organisation) that had been registered in 2015 with very broad charitable objectives to be determined by the Trustees.

The Commission heard reports that the information being disclosed in the charity's financial accounts did not agree to information on the CIO's website. The accounts did not disclose any income or expenditure however the website suggested that donations had been made to a number of projects in the period.

Serious inadequacies were found in the administration of the charity and the Trustees decided to close it down. Instead of receiving donation income and paying out funds to a project, the funding had instead been made directly from the individual to the end project. The Commission were concerned that the website was misleading the public.

Trustees have a duty to ensure that their charity is accountable to the general public and the regulator. Transparency is a key principle within the charity sector and setting up and running a charity is a serious commitment which carries responsibilities for those involved.

RSPCA Tunbridge Wells and Maidstone Branch

Newspaper headlines had reported that a branch of the RSPCA had spent significant funds on a new property, which also housed the daughter of the Chair of Trustees.

The branch had a long term desire to purchase a new property to be run as an animal welfare centre and a number of properties had been viewed. The Chair of Trustees and her daughter (also a trustee) were involved in this property search.

When the position of cattery manager came up it was advertised internally and externally in the local media. The Chair's daughter made clear her intention to apply for the position and the Chair of Trustees had no involvement in the process from that point. The regional RSPCA, the branch treasurer and another branch member formed the recruitment panel. The Chair's daughter resigned from her trustee position before being offered the employed position, however the trustee board could not produce written paperwork to this effect, nor was it minuted. She continued to attend meetings.

The Commission decided that since no written proof was available of the resignation, it was not effective and Charity Commission approval for the appointment should have been sought.

Failures in charity governance were identified because no suitable minutes were available and so decisions had not been properly recorded. All conflicts of interest must be properly recorded.

Safeguarding update

The Charity Commission received 620 safeguarding reports in April and May 2018 as compared to 196 during the same period in 2017.

A taskforce has been undertaking a review of historic serious incident reports on safeguarding issues to make sure that the original submissions were complete and accurate, whether the incidents were reported to any other bodies and whether appropriate follow-up action has been taken by the charities. This task involves a review of 5,500 incidents reported between April 2014 and February 2018.

The Commission will issue a report once the work has been completed.



Draft code of ethics

The NCVO (National Council for Voluntary Organisations) has published a draft code of ethics for the charity sector.

This is a collaboration between charities, umbrella organisations, government and the Charity Commission and aims to prevent people from becoming exploited.

The intention is to provide a framework within which charities can review their existing policies and identify where changes are necessary. Although not mandatory, all charities are encouraged to meet the principles of the code.

The code is laid out in 4 sections:

1. Put beneficiaries first
However this still needs to be balanced with potential conflicting interests for the wider public.
2. Act with integrity
3. Be open

4. Ensure the right to be safe

Everybody who comes into contact with the charity should be treated with dignity and respect and feel that they are in a safe and supportive environment. The consultation lasts for 12 weeks, closing on 26 September 2018 and any comments should be sent to policy@ncvo.org.uk.

The document is intended to be relevant to staff and volunteers alike and is relevant to charities of any size, area of operation or type. All charities should:

- Ensure the safety of any individual who engages with the charity
- Respect every individual's dignity, privacy and appropriate confidentiality
- Increase and improve diversity in the widest sense
- Support and promote inclusion

The draft document can be accessed [here](#).



HM Revenue
& Customs

Updated HMRC Guidance on Grants versus Consideration for a Supply

One contentious area in the world of VAT is the treatment of funding received by charities. This matters because grant income is non-business in nature and outside the scope of VAT. Thus, no VAT will be payable but there may also be VAT recovery implications. On the other hand, if the funding is consideration for a supply, the income will be taxable and related input tax will be recoverable. The consequences of getting it wrong can be very costly.

Earlier this year HMRC finally published their long-awaited, updated guidance which can be found in their [internal manual](#).

A key point is that for a transaction to fall within the scope of VAT, there must always be a supply, consideration and a direct link between the two. HMRC have set out helpful lists of indicators, including neutral ones to help determine the correct VAT treatment. The indicators have been taken from a wide array of court decisions, details of which can be found in the same HMRC guidance. HMRC stress that all factors must be taken into account. We have set out the main factors below:

Factors pointing towards outside the scope treatment:

- the payment was made following a grant application process
- the funders are not the beneficiaries of the project
- the funder will not attempt to control how the money is spent beyond good housekeeping.
- the payments are not treated as trading income or expenditure in the accounts of either party
- funding is drawn down by the supplier as a reimbursement of expenditure incurred

- there is a 'clawback' provision within the agreement but if the funding is withdrawn, there is no legal redress

Factors pointing towards a taxable supply:

- the funder is seeking services in return for their payment
- the contract is commercial in nature, e.g. there will be penalty clauses in place if the supplier does not fulfil their responsibilities
- the supplies are undertaken as an economic activity
- the funder will attempt to control how the money is spent
- if the funding is withdrawn there is legal redress for the supplier to have the payment reinstated or claim compensation
- the payments are treated as trading income or expenditure in the accounts of either party

The neutral factors are:

- the payment is described as a grant in the agreement because what the payment is called does not determine its VAT treatment.
- the level of detail within the agreement does not point in either direction.
- the supplier's activities and the number of projects undertaken are influenced by the payment.

HMRCs detailed guidance is to be broadly welcomed with the caveat that it is not legally binding. Caution is therefore necessary when making decisions based on that guidance.

If you have any questions on any of the above or would like us to review any funding agreements, please do not hesitate to contact Leila Ong (long@pem.co.uk).

Digital Code of Practice

A consultation opened on 3 July for a new Charity Digital Code of Practice. With funding from Lloyd's Banking Group and the Co-op Foundation the new Code will be voluntary and free to access.

The consultation wishes to hear from charities of all sizes about producing guidelines and practical tips to increase the confidence of charities in all things digital.

The consultation will close on 25 September 2018 and you can contribute your thoughts through [the website](#).

The code is for charities registered in England, Wales and Scotland, however it may be of use to smaller unregistered organisations too.

The aim is for the code to be applicable to charities of all sizes, with a separate version available for those with income under £1,000,000.

7 areas have been identified to share the code, which are:

1. Leadership "charity leaders must own and drive

digital as a way of helping their charities be relevant and sustainable."

2. User led "the wants, needs and online behaviours of beneficiaries and other stakeholders should be the starting point for everything the charity does digitally."

3. Culture

4. Strategy "charities should revisit their vision and mission and develop strategies that are ambitious about how to use digital to achieve their goals."

5. Skills

6. Managing risks and ethics

7. Adaptability "digital is changing how everyone lives and works. It is likely that all charities will need to adapt to survive and thrive."

Within each of these principles is information relevant to large charities as distinct from small charities.

Fundraising levy - update

The Fundraising Regulator has issued an annual review for 2018, which covers its second year of operation. Key points of note are:

- 26 charities refused to pay the fundraising levy.
- Another 105 had ignored requests.
- Note that the voluntary levy should be paid by all charities with fundraising expenditure exceeding £100,000 per year.
- The Regulator estimates that the unpaid sums

account for 7% of projected income.

- Although the levy is voluntary those that have not paid will be referred to the Charity Commission.
- In 2017/2018 3,000 registrations were taken and about half of those paid the levy.
- Over 1,000 complaints have been investigated and satisfactorily resolved.
- Since inception almost 17,000 requests have been received by the Fundraising Preference Service to stop communication from charities.

About us

Our experienced Charities and Not for Profit team offers expert advice and support for all areas to suit your specific needs. Please meet our Charities and Not for Profit team who will be happy to talk to you about any issues you may have.

For further advice, information or to feed back please do not hesitate to contact Judith Coplowe on 01223 728283 or email jcoplowe@pem.co.uk



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