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December 2021.

Charities & Not for Profit newsletter

Charity Commission COVID-19 survey

The Charity Commission have published results from an independent survey taken of 1,966 charities in July and August 2021 to gauge the impact of the pandemic on the charity sector.

The headline results include the following:

- 91% of charities have experienced some degree of negative impact on their charity.
- 60% of charities saw a reduction in charitable activity income.
- 57% had to cancel events or other planned activities.
- 32% of charities reported a reduction in access to volunteers.
- 45% of charities had to adapt the services they offer.
- 40% of charities used their financial reserves to allow them to continue their activities.
- 32% of charities had to temporarily pause their activities.
- Generally, 18% of charities furloughed some staff, but in organisations with income over £500,000 that figure rose to 50%.
- 14% of charities surveyed reported having made at least 75% of their staff redundant in the year ended 31 March 2021, but 91% of charities are not planning to make any staff redundant in the next 12 months.
- 62% of charities anticipate an ongoing threat to the financial viability of their charity over the coming 12 months.
- 49% of charities report that they now make better use of digital technology.

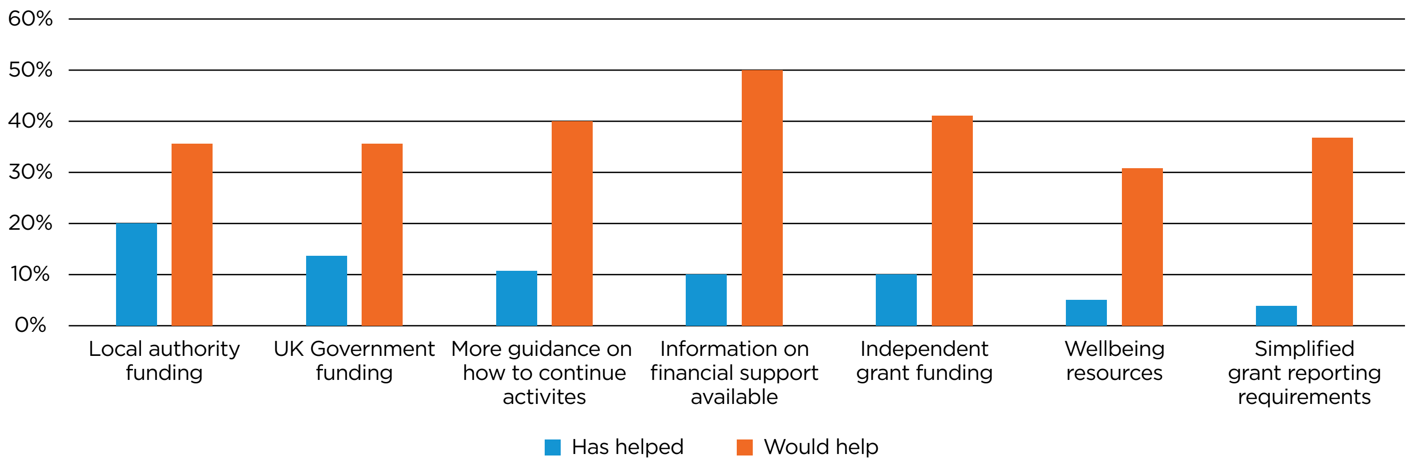
The respondents were asked what would help or has already helped their organisations to respond to the challenges presented by the COVID-19 pandemic and lockdown situation.

The areas in which over 30% of charities surveyed thought more support would be useful are highlighted below.

The number of charities however that thought that these matters had either helped or would help emphasises again the divergent needs and structure in the sector which means that there is no one solution that fits all. Notably only 14% of charities felt furlough funding had helped and 7% thought that it would help a charity response to the challenges presented by COVID-19 and the lockdown measures more generally.

This shows that monetary financial assistance from local councils or national government has been invaluable to the charity sector. Going forward, guidance and information seem to be a priority.

What has helped or would help your charity during the pandemic?



Changes to the creative sector reliefs

The Budget contained a welcome announcement for the creative sector, with an unexpected increase in the tax credit rates.

The draft legislation for this and other changes has been released as the Finance Bill (No. 2). This has the details of not only the rate changes but also other amendments.

Theatre Tax Relief and Orchestra Tax Relief

The rates at which losses can be surrendered for a payable tax credit have been increased from 25% to 50% for touring theatre productions and orchestra concerts and from 20% to 45% for non-touring theatre productions from 27 October 2021 to 31 March 2023.

This only applies to productions which enter the production phase on or after 27 October 2021. From 1 April 2023 to 31 March 2024, this reduces to 35% and 30% respectively. After that the rates fall back to their original values.

It is worth noting that some orchestra companies elect for a series of concerts to be treated as one trade for the purposes of the relief.

If this election is made then the first concert in the series covered by the election must enter the production phase on or after 27 October 2021. This means in some cases it may be preferable to split the series into an election on those in production before 27 October 2021 and a separate election for those after that date, so the later concerts can access the increased rates.

Other changes which apply from 1 April 2022 are:

- Theatre productions intended for an audience of less than 5 individuals will not qualify.
- Theatre productions and concerts produced for training purposes do not qualify.
- There has always been a requirement that a "commercial purpose condition" is met, which means that the intention is that all (or a high proportion) of the live performances are to paying members of the public or provided for educational purposes. This has been expanded to say that a performance to members of the general public is only regarded as such if:

1. it is separately ticketed; and
2. it is intended that a significant proportion of the earnings from the performance should be obtained by such ticketing.

The fact that a ticket covers things reasonably incidental to the performance (such as, for example, a programme or food to be consumed during the performance) does not prevent the performance from being separately ticketed, provided that the price paid can reasonably be apportioned between the performance and those other items. A performance is only regarded as provided for educational purposes if it is provided mainly for the purpose of educating the audience.

- Payments by educational bodies for training does not qualify for relief, unless this relates to a rehearsal for a qualifying production/concert. ▶

Museums and Galleries Exhibition Tax Relief

The rate at which losses can be surrendered for a payable tax credit have been increased from 25% to 50% for touring exhibitions and from 20% to 45% for non-touring exhibitions from 27 October 2021 to 31 March 2023. This only applies to exhibitions which enter the production phase on or after 27 October 2021.

From 1 April 2023 to 31 March 2024, this reduces to 35% and 30% respectively. The relief, which was due to end on 31 March 2022 has now been extended to 31 March 2024.

It is worth noting that the cap on the credit per exhibition is still limited to £80,000 per non-touring exhibition and £100,000 for a touring exhibition.

Changes which apply from 1 April 2022 are:

- A display of an object or work is not an exhibition to the extent that the public display of the object or work is subordinate to the use of the object or work (or of anything of which it forms part) for another purpose.

If you require any further information, please contact PEM. ■

Take action on fraud

Charity Fraud Awareness Week took place 18 – 22 October 2021 and the Charity Commission has warned that in the last financial year charities reported lost funds of £8.6 million.

1,059 separate incidents of fraud were reported by charities during the year to 31 March 2021, however it is likely that the issue is much wider as many instances of fraud go unreported.

65% of charities feel that the risk of fraud has increased because of the pandemic, especially due to remote working and virtual sign-off processes.

The Charity Commission and the Fraud Advisory Panel are encouraging trustees to sign up to the "Stop Fraud Pledge" which you can access here. Charities who sign up are pledging to:

1. Appoint a suitable person to champion counter fraud work in their organisation.
2. Ensure that all trustees are aware of their legal duty to protect the charity's assets.
3. Consult with staff, volunteers, and trustees to identify the types of fraud that threaten the organisation and ways it can be prevented.
4. Create a written fraud policy and share it with staff, volunteers, and trustees.
5. Perform checks on individuals and organisations with whom they have a financial relationship.
6. Assess each year how well fraud controls are working, consider new risks and make improvements as needed.

More information and resources are available at:

- www.preventcharityfraud.org.uk/resources/
- www.ncsc.gov.uk/collection/charity (small charity guide)
- www.ncsc.gov.uk/collection/board-toolkit (suitable for larger charities)

Going green or 'green-washing'

The report published by the United Nations' Intergovernmental Panel on Climate Change (IPCC) in August 2021 was called by the UN Secretary General a 'code red for humanity' and according to the IPCC, the world has just 12 years to limit climate change to 1.5°C, although some changes set in motion are already 'irreversible' for centuries to millennia.

As new resolutions were made at COP26 now is the time for individuals, companies and charities to take further or first steps in understanding their carbon footprint and their impact on the environment.

It is not just the environmental charities that are impacted: climate change issues for all charities may be **direct**, for instance a property in a flood zone becoming unusable; or **indirect**, for example rising fuel prices mean that services can no longer be delivered within budgets.

Issues may change **beneficiary demands** on resources or services, not only increased demand from those impacted by fire, famine or flood, but also those made unemployed by changes to technology or pushed into poverty.

Investment strategy may be reframed to meet environmental, social and governance (ESG) aims that reflect the ethos of the charity. As each charity is different so are these risks around climate change and the agenda for each trustee board.

All charities must manage the reputational risks around public expectations of what charities should do in times of crisis. These may be baby steps, from reducing air travel and printing, to encouraging meat-free Mondays and turning off lights and devices.

Taking stock

There are perhaps two main questions:

- what impact do the charity's activities have on the environment?
- what impact does the environment have on the charity?

Until those questions are answered then it is difficult to set targets, determine strategy, understand and measure the impact of any actions taken, and share good practices.

Reporting requirements and directors' duties

Whilst most non-profit entities are not required to make climate related financial disclosures in line with the recommendations of the Task Force on Climate-related Finance Disclosures (TCFD), large charitable companies will need to report on both their consumption of energy in their Streamlined Energy and Carbon Report (SECR); and on the actions they take in accordance with their section 172 duties, which includes reporting on how, in promoting the success of the company, the director has had regard to the impact of the company's operations on the community and the environment. Directors of medium and small charitable companies do not need to make the SECR disclosures or a section 172 report in their financial statements, but they, as directors, are still bound by that duty under the Companies Act.

It is important that these are not tick-box exercises but that understanding and considering the impact of the company's actions provides relevant and reliable information for forward looking planning. The Financial Reporting Council has published FRS 102 Fact sheet 8 on climate related matters which challenges all those reporting under FRS 102 to consider the impact of climate changes in their accounts from narrative reporting to going concern, provisions and impairments.

The Charity Commission SORP Information Sheet 5 sets out the SECR requirements which include trustees considering sustainability of all the charity's activities and supply chains for relevant energy sources. Non-company charities do not fall within these reporting requirements, but public focus means that the impact of climate change may be an equally relevant and important story to tell.

Now is the time for greener new year's resolutions and for sustainability and climate change to become a regular feature on the trustee board agenda.

Preservation charity inquiry – lessons to be learned

The Charity Commission has concluded an inquiry into a preservation charity.

The charity had initially been set up in 1999 and the objects were broad, being "to preserve for the benefit of the Nation, the historical, architectural and constructional heritage that may exist in buildings of particular beauty or historical, architectural or constructional interest."

There were four Trustees, of which three were members of the same family (father, son and daughter-in-law). The fourth trustee had not been in office long when the inquiry was opened and was found not to have had any involvement in the matters under review.

Concerns were raised about unauthorised trustee remuneration, private benefit for trustees and occupation of charity property and the inquiry concentrated on four main areas:

1. Whether the charity's objects were being met and the charity was operating for the public benefit.

A charity can buy property in order to further its purposes, such as to renovate historic houses etc. However, a Hall was purchased within the charity which was occupied rent free by the three family members for about 5 years, until they were evicted during the inquiry.

They had remained in the property even after the restoration work had been completed, saying that they were providing a security service.

All running costs of the property were paid by the charity with no reimbursement from any of the trustees.

The inquiry found that the trustees had not acted in the best interests of the charity.

2. Whether there was any mismanagement/ misconduct by trustees relating to financial controls and the management and application of charity funds, property, and assets.

Charity funds were used to purchase and maintain high value motor vehicles, as well as expenditure on entertaining, travel and subsistence.

None of which could be evidenced as being for

charitable purposes. No formal policy was in place for claiming and approving expenses and the fact that the trustees were all related meant that there was no independence in such payments.

Furthermore, professional fees and the purchase of overseas properties were also identified and found not to be proper use of charity funds. No rental income was received from the overseas properties and they were sold at a loss.

3. Whether the trustees had acted prudently and exercised reasonable care in the day-to-day running of the charity.

The son received a salary for managerial and repair work to the property and the daughter-in-law for managerial, accountancy and cleaning.

Any remuneration of trustees must be authorised in the charity's governing document, by order of the Charity Commission or by a Court.

That was not the case. The salary payments were found to be in breach of the Memorandum of Association and constituted misconduct/mismanagement of the charity.

4. Whether the trustees had complied with and fulfilled their duties and responsibilities under charity law.

A loan was made to one of the Trustees relating to a vehicle purchase and no approval had been sought for the loan from the Commission. The inquiry found that the loan was not in the best interests of the charity.

The inquiry concluded that there had been serious misconduct/mismanagement in the administration and management of the charity, significant personal benefit to the trustees, no regard to identifying conflicts of interest and a failure to make sure that the charity was carrying out its purpose for the public benefit.

The three trustees were removed from office and the charity was subsequently wound up.

Lessons for the wider sector

- Trustees have a legal duty to ensure that charity funds are applied solely and reasonably in furtherance of its objects.
- Trustees should keep records and an adequate audit trail to show that the charity's money has been properly spent on furthering the charity's purposes for the public benefit.
- The law states that trustees cannot receive a benefit from their charity in return for any service that they provide unless they have the legal authority to do so. This permission may be in the governing document, from the Charity Commission or from the Courts.
- Trustees have a legal duty to act in the best interests of the charity and if there is a conflict of interest then certain additional steps need to be taken.

Caroline Fagence
Manager, Audit & Accounts

e. cfagence@pem.co.uk

Common Reporting Standard

As we come to the end of another calendar year, it is important that charities consider whether they need to act in respect of the Common Reporting Standard (CRS). When this was introduced in January 2016 there was discussion with HMRC as to how this would affect charities. Subsequent to this HMRC produced detailed guidance specifically for charities, which can be found in their manual.

As a reminder, CRS is an information exchange regime to provide international tax transparency and reporting is on a calendar year basis. CRS is a global regime and applies broadly to any person or entity that maintains any sort of account with a financial institution within a participating jurisdiction. Such entities are required to complete a CRS self-classification form and you may have received these from your bank.

However, there may be more onerous reporting requirements for some charities. The US FATCA, which requires institutions to report on US account holders, contains an exemption meaning that UK charities do not have reporting requirements under FATCA. However, the CRS does not contain such an exemption; all charities that fall into the "financial institution" category should consider whether they are required to make reports.

A charity may be regarded as an investment entity (a type of financial institution) if its investments are managed by a financial institution and its gross income is primarily attributable to investing, reinvesting, or trading in financial assets. A charity must meet both criteria to be deemed a financial institution. In general:

- an entity is regarded as being "managed by a financial institution" where it has appointed a financial institution (for example, a professional investment manager which is not an individual) to manage all or part its assets on a discretionary basis.
- an entity's income is "primarily attributable" to investing, reinvesting, or trading in financial assets where this activity accounts for at least 50% of the charity's gross income.

Where a charity structure includes a trading subsidiary that pays up profits to a parent entity under the gift aid rules such distributions are treated as a donation from the subsidiary to the parent entity under UK tax rules. For the purpose of determining whether a charity is an investment entity HMRC consider that such income is not income from Financial Assets. HMRC have also clarified that unit trusts will not be regarded as investments under 'discretionary management' – meaning that trusts or foundations that have placed all of their investments in unit trusts will not be caught by the Common Reporting Standard.

Charities that are "financial institutions" under the CRS will need to identify whether they maintain "financial accounts" which must be reported to HMRC. Charities that may be deemed to maintain "financial accounts" include those who have issued equity interests, bonds or other debt instruments and also those charities constituted as trusts who make grants to beneficiaries.

Where such charities are "financial institutions" they will need to perform due diligence upon their ►

account holders or beneficiaries and will need to report certain information regarding these account holders or beneficiaries to HMRC. The majority of charities who are "financial institutions" will not maintain "financial accounts" and there is no requirement for these charities to submit nil returns. Broadly reports will relate to non-UK resident individual account holders.

After the introduction of CRS. HMRC clarified the rules requiring charities to check the tax status of all grant-holders. Incorporated charities do not have to provide evidence of the tax status of all grant-holders but all unincorporated charities relying on investments for more than half of their income will still have to do so.

Further clarification on incorporated organisations state that "any UK charity that is incorporated may still qualify as a financial institution if they meet the income and discretionary management tests, however they will not have to carry out due diligence or report on grant holders, and will only be required to do so for members of the company who have a debt or equity interest".

If you are concerned about your potential obligations under CRS please contact PEM. ■

Judith Pederzolli
Director, Business Tax

e. jpederzolli@pem.co.uk

What does a good audit look like?

The Financial Reporting Council (FRC) has just published a paper on 'What makes a good audit?'.

This sets out the FRC's views on the key elements that make up a good audit and contribute to audit quality. Although not specifically covered the FRC acknowledges that a management who can provide robust and well evidenced information, with effective internal controls and a well governed board are also important to a high quality audit.

The FRC defines high-quality audits as those that:

- provide investors and other stakeholders with a high-level of assurance that financial statements give a true and fair view;
- comply with both the spirit and the letter of auditing regulations and standards;
- are driven by a robust risk assessment, informed by a thorough understanding of the entity and its environment;
- are supported by rigorous due process and audit evidence, avoid conflicts of interest, have strong quality management, and involve the robust exercise of professional judgement and professional scepticism;
- challenge management effectively and obtain sufficient audit evidence for the conclusions reached; and
- report unambiguously the auditor's conclusion on the financial statements.

Audit quality will be driven by clear communication, transparency and challenge between the auditor and audited entity.

Nikki Loan
Director, Audit & Accounts

e. nloan@pem.co.uk

Safeguarding

The Charity Commission have issued new guidance relating to safeguarding for charities and trustees, which can be accessed here: Safeguarding for charities and trustees - GOV.UK (www.gov.uk).

All charities have a responsibility to make sure that they do not cause harm to anyone who has contact with them. Trustees must be aware that they retain overall responsibility even if they have delegated this to another person or group.

The Commission is encouraging all trustees to make sure that their charity takes the following 5 actions:

1. Identify and manage risks

Identify any safeguarding risks that the charity needs to manage depending on who you work with, where you work and what you do.

2. Have suitable policies and practices in place

Have in place robust safeguarding policies which everyone understands and uses.

3. Carry out necessary checks

You can get more information from the DBS about what level of check is required in different circumstances.

4. Protect volunteers and staff

Make sure that you have clear policies on bullying, harassment, and whistleblowing.

5. Handle and report incidents appropriately

When handling incidents the charity's policies and procedures must be followed. Support is available at: Handling safeguarding allegations in a charity | Office for Civil Society (culture.gov.uk).

Trustees' Week

Trustees' Week took place 1 – 5 November 2021.

This was the 11th year for this event which showcases the work of Trustees. The website has various short films, which can be accessed here: Trustees Week – Showcasing the work of charity trustees.

Some of the events, which have already passed, can still be accessed via the website, having been uploaded to YouTube: Events for 12 October – 19 November – Trustees Week.

Jayne Rowe
jrowe@pem.co.uk

Kelly Bretherick
kbretherick@pem.co.uk

Judith Pederzolli
jpederzolli@pem.co.uk

Michael Hewett
mhewett@pem.co.uk

Nikki Loan
nloan@pem.co.uk

Kate Millard
cmillard@pem.co.uk

Caroline Fagence
cfagence@pem.co.uk

Gemma Baratte
gbaratte@pem.co.uk

PEM
Salisbury House
Station Road
Cambridge CB1 2LA

t. 01223 728222
e. pem@pem.co.uk

pem.co.uk

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