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Charities & Not for Profit newsletter

Gift Aid & naming rights

When a charity is constructing a new building as part of the fundraising process it may be decided that if a significant donation is received from one party it would be appropriate to name the building after the donor. In some cases, a charity has an existing building which it decides to rename in honour of a significant donor.

HM Revenue & Customs guidance says the following on this matter:

Sometimes charities want to name a building or part of a building after a donor who's provided a substantial part of the funds to pay for the building. There's no monetary value attached to the naming of a building after an individual but that does not necessarily mean there's no benefit for Gift Aid purposes. The naming of the building or part of the building needs to be unsolicited and not expected in return for the donation.

This statement means that Gift Aid could be in doubt if the donor was expecting the naming as part of the donation.

If your charity is contemplating naming a building after a donor and it is thought that Gift Aid may be available then the charity should ensure that:

- all communications show that it is the charity's choice to name a building, not a request of the donor;
- the arrangements are not the trading of rights e.g., a donor is not allowed to bid for the naming, and is not requesting that they can replace the name currently on the building in return for a payment; and
- the naming should be clearly referred to as an acknowledgement of the donation rather than the donor having naming rights.

The above isn't a guarantee of Gift Aid being secured but will help justify the naming as being unsolicited.

Value added tax

Donations, where financial support is freely given and secures nothing in return, are outside the scope of VAT. There is no supply for VAT purposes where a charity provides an insignificant benefit such as a minor acknowledgement of the source of the funding. HMRC cite naming a building after a donor as an example of an insignificant benefit. Thus, VAT should not feature unless the naming of a building forms part of a larger arrangement involving more tangible benefits such as to bring it within the scope of VAT.

Legal advice

For significant amounts the charity may wish to seek legal advice regarding the arrangements.

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Climate change

We reported in our December 2021 newsletter on the responsibility resting with charities to take steps to reduce their carbon footprint and reduce their impact on the environment.

Investments in responsible funds which avoid fossil fuel producers and industries that emit high levels of carbon are available and information benchmarking their performance is growing. CDP is a not-for-profit charity that runs the global disclosure system for investors, companies, cities, states and regions to manage their environmental impact. CDP run an annual Non-Disclosure Campaign to encourage companies who are not making environmental information readily available improve their disclosure to aid transparency for all.

A climate report has been published recently by Edentree, which is a charity-owned investment management firm who distribute all their available profits to good causes. The full Edentree report may be accessed **here**.

It is generally accepted that global warming needs to be limited to 1.5 degrees centigrade above pre-industrial levels. The report considers the effect that companies within the FTSE are expected to have on climate change by 2050, taking into consideration any emission targets already published and decarbonisation trends generally.

The research found that the following increases in climate change are expected:

- For the FTSE All Europe ex-UK index +2.4 degrees Celsius
- For the FTSE All World +3 degrees Celsius
- For the FTSE All Share +4.5 degrees Celsius

This illustrates that every person, investor and charity needs to take even small steps if we are going to limit global warming globally.

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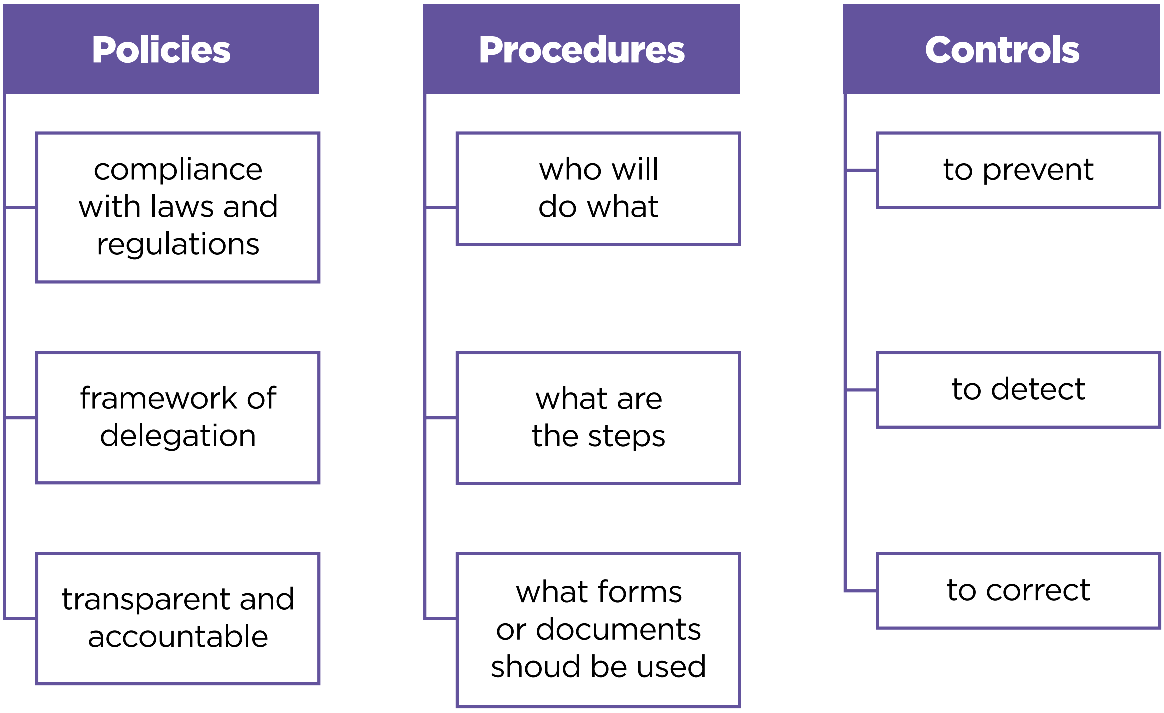
Time for a spring clean

As we start 2022 it is hard to know what the year will hold. The pandemic may be loosening its grip as restrictions ease again but there are many economic unknowns as well as the looming challenge of responding to climate change.

So now is a good time for management and trustees to take stock internally so that the organisation can plan and be ready to react.

One of the cornerstones to good governance is a clear, appropriate, and complete set of policies and procedures to ensure that your organisation is well run.



With changes to ways of working, turmoil in the supply chain, and creation of what many are calling the ‘new normal’ there is a risk that many long-established policies are no longer fit for purpose.

For example, volunteer policies may be appropriate for face to face activities, but do they cover online meetings? Financial procedures may have relied on manual sign-off of printed reports with supporting paper invoices or documentation: have these been replaced by something suitable – can electronic documents or evidence be manipulated more easily, and what are the new checks and balances in place?

The list of policies can seem never ending and can weigh down the trustees’ meeting agenda perhaps feeling like a distraction from the main business, but it is essential that these are regularly reviewed and updated for new ventures or ways of working so that both the risks facing the organisation are managed and the ethos of the organisation is maintained.

So as well as the essentials around health and safety, safeguarding, confidentiality and risk assessment, has the organisation reviewed and understood, for example, the impacts of working from home: workspace assessment, data security, email/internet and social media presence. Has the risk of cyber fraud increased with remote access, been considered and addressed? Should an office be used by few or single individuals: has their safety and office security been assessed? Where decisions were made by informal discussion between team members in an office, is there a new method to capture those thoughts and check the conclusions? If staff are working from home, what has been the impact on supervision, appraisal and most importantly well-being? How does the organisation create or recreate the culture? How do trustees and management communicate?

These questions are mainly operational but trustees will also need to consider their financial policies, including their reserves policy.

The last two years will have given trustees insight into what might be required to manage through a crisis and although some charities may have ridden the storm so far with government support and other grants, their income sources going forward may be smaller and less reliable, with potential demand for their services ever increasing.

What is going to be the policy of the trustees to balance demand and resources for the long-term viability of the charity?

Once trustees are satisfied the existing policies reflect the current and future plans of the organisation, there is then the question of whether they are complete.

After striving to maintain operations and services through the pandemic have trustees and management had time and space to reflect on other external changes, including changes in the charity governance code in 2020 highlighting equality and diversity and the developing green agenda. Whilst a policies list is never complete and should be tailored to each individual entity some suggested policies include:

- Health and safety
- Safeguarding
- Confidentiality, privacy and data protection
- Equality and diversity
- Risk management
- Financial delegations and procedures manual
- Reserves policy
- Trustee code of conduct, conflict of interest policy and trustees' expenses policies
- Complaints and whistleblowing policies
- Investment policy (including ethical considerations)

Those charities with staff will need to increase the number of necessary policies twofold. The NCVO provides a helpful starting point for those thinking about operations and policies.

For those wishing to review their financial controls the Charity Commission self-assessment checklist is a good starting point.

Giving safely

At the end of 2021, Action Fraud (National Fraud & Cyber Crime Reporting Centre) reported that £1.6m was lost to online charity fraud over the past year.

This included both donations solicited for non-existent charities as well as fraudulent collection of funds from genuine charities and represented a 16% increase on the previous year. Before donating to charity, the public is advised to following some simple steps:

- Check the charity is legitimate by looking on the Charity Commission website.
- Check whether the charity is registered with the Fundraising Regulator.

  Look out for the Fundraising Regulator's badge on the charity's marketing material.
  Ask for further information if you are unsure because any legitimate charity will be happy to answer questions.

Action Fraud also have a variety of leaflets and posters with tips and guidance and these are available here, covering:

- Giving Safely – On the doorstep poster
- Giving Safely – On the street poster
- Giving Safely – Online poster
- Giving Safely leaflet

Fundraising reminders

Complaints

The headline from the Fundraising Regulator's annual report published in September 2021 was that complaints about online fundraising increased by 252% during the pandemic. Given the way we all had to suddenly adjust to periods of isolation this is not perhaps surprising.

The year to March 2021 also saw a decrease in the number of complaints about door-to-door fundraising, or about challenge and sponsorship events, which again appears to reflect continuing restrictions on social mixing in place.

Overall, the total number of complaints reported by fundraising charities has continued to decrease as has the number of complaints to the Regulator (362 complaints closed in 2020/21 compared with 368 the previous year).

The Fundraising Regulator reported that the most common cause of complaint across all fundraising methods received was misleading information: Charities being unclear about why donations are needed or how they will be spent, or a failure to present information that allows the donor to make an informed decision.

Over the next year, the Fundraising Regulator will focus on supporting the sector to achieve good standards of fundraising with a particular focus on digital fundraising methods, and to understand the risks that this method can involve.

This includes a review of the Code of Fundraising Practice in 2022, which will consider whether existing standards in the code related to digital fundraising are sufficient to support the sector, or whether changes are needed in this area.

And compliance

The Regulator has carried out two surveys so far on compliance with the requirements of The Charities (Protection and Social Investment) Act 2016 and whilst the scoring method was changed between years the Regulator felt that there was little improvement year on year and the majority of the charities did not report either on all the requirements of the Act or report transparently so that their activity would be clearly understood by a member of the public. Further, the Regulator identified areas where, although key words were mentioned, and the statement was clearly written, it still lacked a level of detail that would have helpfully illustrated that relevant policies or activities were in place.

With the changes in fundraising methods and plans over the period of the pandemic, it is important that trustees are sure that they have addressed the risks and have appropriate safeguards in place for any new fundraising approaches.

As trustees and management review their next annual report it is worth reconsidering whether their description of fundraising explains all the current fundraising activities undertaken by the charity and meets all the requirements set out below.

The statement must describe:

- the fundraising approach taken by the charity, or by anyone acting on its behalf, and whether a professional fundraiser or commercial participator carried out any fundraising activities;
- details of any fundraising standards or scheme for fundraising regulation to which the charity has voluntarily subscribed;

- details of any fundraising standards or scheme for fundraising regulation to which any person acting on behalf of the charity has voluntarily subscribed;
- details of any failure by the charity, or by any person acting on its behalf, to comply with fundraising standards or scheme for fundraising regulation to which the charity or the person acting on its behalf has voluntarily subscribed;
- whether the charity monitored the fundraising activities of any person acting on its behalf and, if so, how it did so;
- the number of complaints received by the charity, or by a person acting on its behalf for the purposes of fundraising, about fundraising activity;
- what the charity has done to protect vulnerable people and other members of the public from behaviour which:
  - is an unreasonable intrusion on a person's privacy;
  - is unreasonably persistent; and
  - places undue pressure on a person to give money or other property.

More guidance can be found in the Charity Commission guidance CC20 Charity fundraising a guide to trustees duties.

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Budgeting & forecasting

Recent events have brought the need for effective budgeting, forecasting and cash flow management to the forefront. Whether this is to navigate challenging times, to define a recovery strategy or simply to plan effectively and make informed decisions, budgeting, forecasting and cash flow management have never been more important.

Budgeting & forecasting

The benefits of detailed budgeting and forecasting include being able to see at a glance how performance compares with expectations, to be able to plan for different scenarios and to see the impact of flexing key variables. Whether you are experiencing growth or decline, a focus on key performance indicators and scenario planning can support you to create a strategy to reach your objectives. Charity Commission guidance requires trustees to:

- Protect your charity's money
- Know your charity's financial position
- Keep accurate financial records
- Manage expenses and payments to trustees
- Deal with financial problems quickly

A key element of this is understanding the potential impact of different scenarios on your current and future cash flow requirements. Whilst no-one is able to predict the future charity managers and trustees have a wealth of understanding about their organisation and activities: Capturing this knowledge to provide an expectation of income and costs, allows charities to plan effectively. Assumptions may be fairly certain, based on agreements and facts; they may arise from intelligence gathering, based on experiences of similar projects, knowledge of the resources required; or they may be a best guess.

Whatever the source of the assumptions the key to good budgeting and forecasting is to regularly review, re-forecast and refine.

An integrated view

Assumptions, assessment of risks and reserves policies are not separate activities but must be integrated to inform trustees decisions. How certain are the assumptions around that income? What are the risks that a project may fail? Are there sufficient reserves that trustees are satisfied that the risk can be managed?

Proactive working capital management and timely cash flow forecasting is a crucial tool for management and trustees.

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Charity Commission Investigations

Last week, the Charity Commission released its inquiry decision on Keeping Kids Company ("Kids Company"), finding mismanagement in the administration of the charity.

The official report found that the charity had operated a high risk business model with heavy dependence on grants and donations, recent rapid expansion had resulted in failure to pay HMRC, staff and other creditors in a timely manner, and low reserves. Expenditure had increased without securing sufficient income and a higher level of reserves would have allowed the charity to avoid liquidation, or to merge with another organisation.

The report concluded that the trustees were aware of the risky business model that they were operating under and recognised the need to make changes but should have taken action sooner by building up reserves, clearing debts, improving the cashflow position and controlling the rate at which it was expanding.

Record-keeping was found to be below par, with some documents having been destroyed when the charity collapsed and some records potentially never having existed in the first place. Without these records the Commission said that there was inadequate evidence to be satisfied that significant expenditure on a small number of beneficiaries was justifiable.

The Commission inquiry was opened in 2015 and it has been a lengthy process to reach conclusion. The charity was removed from the register of charities on 13 May 2021. Although the Commission acknowledges that the Kids Company situation was unusual, it identifies some lessons for the wider public:

- Effective board leadership – A permanent leadership role in a charity is rarely in the best interest of a charity and no charity should be defined by a single individual.
- Managing risk associated with innovative approaches – Public benefit can be delivered in many varied ways, but any new and innovative approaches need to be balanced against an assessment of the risks.
- Planning reserves – There is no "one size fits all" situation, but all charities should maintain a reserves policy and review their finances accordingly.
- Managing growth – Charities need to make sure that they have the infrastructure, governance and resources needed to support planned growth.

The full report is available here.

Last week another high profile charity was again in the spotlight as news outlets reported that the Charity Commission is about to open an inquiry into the Captain Tom Foundation, citing concerns surrounding its governance, including conflicts of interest. As yet no inquiry has formally been opened therefore at this stage it cannot be said that any wrongdoing has taken place. We will follow up on this matter in due course.

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