

pem.



**April
2022.**

Charity & Non-Profit newsletter

Charity Commission statement on Ukraine

“The invasion of Ukraine by Russia is a shocking event, which has upturned the lives of many millions of people in Ukraine, and challenges the sense of peace and security in which many Europeans have lived for two generations. It seems probable that the repercussions will impact widely across society, including for many charities registered with us, responding to these events as they unfold.” Charity Commission, 2 March 2022.

Following that statement the Charity Commission has been regularly updating its guidance which includes the following key messages:

Public fundraising

The Charity Commission and Fundraising Regulator have urged the public to ‘give safely’ to registered charities helping and supporting those affected by the invasion of Ukraine and are advising that the public make simple checks when giving.

- check the charity’s name and registration number at www.gov.uk/checkcharity. Most charities with an annual income of £5,000 or more must be registered, and you can use the advanced search function to identify charities working in specific regions and countries;
- make sure the charity is genuine before giving any financial information;
- be careful when responding to emails or clicking on links within them;
- contact or find out more online about the charity that you’re seeking to donate to or work with to understand how they are spending their funds; and
- look out for the Fundraising Badge on charity fundraising materials, this is the logo which shows that a charity has committed to fundraise in line with the Code of Fundraising Practice.

Charities seeking to fundraise effectively should ensure that they protect the public and the funds collected. The Charity Commission has guidance in place for trustees on [running effective and impactful appeals](#), and on [holding, moving and receiving funds safely](#). The [Disasters Emergency Committee](#), a coalition of 15 leading UK charities, has launched its collective appeal to provide emergency aid and

rapid relief to civilians suffering during the conflict and, as at 30 March 2022, the fund had raised £260m.

Changing charitable objectives

As when responding to COVID-19, charities should first check whether their objectives allow them to help. If a charity needs to change its objectives in order to respond, trustees must ensure that they have considered whether other charities are better placed to help; whether there is a wider or longer-term impact on their current beneficiaries by the change; and whether it is in the best interests of the charity.

Receiving donations

All charities should know their donors and consider whether or not to accept donations. This is not only impacted by legal sanctions but includes where there may be reputational concerns.

We would recommend that Charity Commission guidance covering key questions around [‘knowing your donor’](#) form the basis of a donations policy which should be approved by trustees and understood by any in the charity who may be approached with donations.

Operating overseas

Charities operating in Russia may come under increased pressure as a result of sanctions and guidance can be found in [e-alerts from HM Treasury](#), the [Office of Financial Sanctions Implementation \(OFSI\)](#) and [Foreign, Commonwealth and Development Office \(FCDO\)](#) advice on keeping staff, volunteers and funds safe. The Charity Commission guidance on [how to manage risks when working internationally](#) is a useful aid for trustees who wish to check that they have appropriate safeguards in place to protect the charity’s staff, volunteers, assets and reputation.

Nikki Loan

Director, Audit & Accounts

[e. nloan@pem.co.uk](mailto:nloan@pem.co.uk)

CAF report

What's on the horizon for charity trustees?

The report produced by the Charities Aid Foundation (CAF) in partnership with the Institute of Chartered Accountants in England and Wales (ICAEW) considers the factors at play affecting the operating environment for charities and highlights a few key issues for trustee board agendas going forward.

The six areas of challenge identified in the report for charity trustees are:

- 1. Financial resilience** – factors here include the diversifying funding, securing grants, cost pressure in service delivery, supply chain, staff, digital technologies forcing systems change and increasing threats from cybercrime and fraud with over £8m lost to the sector from April 2020 to March 2021.
- 2. Working together** – this section questions how trustees impact the collaboration within the charity and challenges trustees not only to consider the impact of skills and experience but also motivation and influence.
- 3. Diversity** – the report notes that achieving diversity remains a challenge, and has many aspects. Diversity may come from skills and knowledge, personal characteristics and experience, for certain charities having the voice of a beneficiary represented on the board may be helpful or even essential.
- 4. Support and training** – although there is support and training available to trustees, it must be sourced from a variety of places including the Charity commission Guides, CAF resources and ICAEW trustee training modules. As a result, and due to time, accessibility and cost, the training available to individual charity trustees may not meet their needs. The report felt that the sector would benefit from one clear, credible, centralised support.
- 5. Digital** – COVID may have forced a digital revolution but for some charities incorporating digital into their ways of working remains a challenge. Coupled with advances in technology, communication and online giving; come safeguarding and data protection risks.
- 6. Sustainability** – this section of the report challenges charities to develop a sustainability policy, although recommends that more guidance and support is required to support trustees and charities in addressing these issues.

Charity sponsorship agreements - taxable income

With growing uncertainty over public funding and increasing pressures on third sector services, it is logical for charities to seek income from corporates and other entities to further the charity's objectives. An increasing number of charities are entering into sponsorship arrangements with commercial businesses.

Whilst sponsorships are not a new arrangement, many charities are increasing the level of benefits being provided by the charity to the sponsor in return for the sponsorship payment.

Where the charity is doing more than acknowledging and thanking the sponsor, HM Revenue & Customs (HMRC) may view this income as being derived from a non-primary purpose trade, causing the income to be subject to income or corporation tax.

The tax treatment of payments received by charities under sponsorship arrangements will depend on the nature of the arrangement. Where no goods or services are provided by the charity in return for the payment, the income is treated as a charitable donation, freely given by the sponsor, with no obligations on the charity other than that the money be used for charitable purposes.

The sponsor deriving good publicity or PR benefits from the payments does not automatically mean the income is trading income in the hands of the charity.

However, where a charity does provide either goods or services, such as advertising, in return for the sponsorship payments then this may be treated as trading income.

The most common form of publicity received in return for a sponsorship is the inclusion of the sponsor's name in charity publications.

Provided that such references amount to no more than acknowledgements of the sponsor's contributions they will not cause the payments to be regarded as trading income.

HMRC give examples of more significant services which are deemed to be advertising, and therefore trading:

having to pay tax. If the level of turnover is above this, then the whole of the income is charged to tax.

Charity's gross annual income	Maximum permitted small trading turnover
Below £32,000	£8,000
£32,000 to £320,000	25% of the charity's total annual turnover
Above £320,000	£80,000

VAT

Sponsorship is invariably subject to VAT at the standard rate of 20%.

A person who receives sponsorship will normally be making taxable supplies if, in return, there is an obligation to provide the sponsor with a significant benefit or benefits, examples of which were mentioned above. What matters is that the agreement or understanding with the sponsor requires the person being sponsored to do something in return.

Any sponsorship income received from persons belonging outside the UK is outside the scope of VAT.

Where a sponsor's support is freely given and secures nothing in return, the recipient does not make a taxable supply and the sponsorship can be treated as a donation outside the scope of VAT.

A taxable supply is not created where the sponsor only receives an insignificant benefit such as a minor acknowledgement of the source of the support. This can include naming the donor in a list of supporters in a programme or on a notice.

How can PEM help?

PEM are able to review sponsorship arrangements, either those which are already in place, or any new arrangements not yet agreed upon, to ensure that the charity's compliance and payment obligations are being met.

Judith Pederzolli
Director, Business Tax

Robert Plumbly
Director, VAT

[e. jpederzolli@pem.co.uk](mailto:jpederzolli@pem.co.uk)

[e. rplumbly@pem.co.uk](mailto:rplumbly@pem.co.uk)

- large and prominent displays of the sponsor's logo;
- large and prominent displays of the sponsor's corporate colours; and
- a description of the sponsor's products or services

There is a limited exemption for small levels of non-primary purpose trading, whereby, depending on the charity's gross annual income, the charity can receive turnover from non-primary purpose trading up to a specified level, shown in the table, without

Charities Act 2022

The Charities Bill to amend the Charities Act 2011 and the University and College Estates Act 1925 received royal assent in February 2022 and passed into law. However that is not the end of the journey as the legislative changes now need to be implemented, some of which will require secondary legislation.

The Charity Commission reported through its [blog](#) at the end of February that the Charity Commission will let charities know when each of the relevant provisions come into force and they have updated the relevant pieces of guidance or amended an online service.

The main aims of the Act are to give charities more freedom to govern well and the Charity Commission more power to intervene when they do not. The recommendations have been set out in twelve areas.

One of the key themes of the recommendations is to give greater consistency across all charities, however they may be established, in how they may:

- Manage changing purposes and governing documents;
- Obtain tailored advice to manage land acquisitions and disposals;
- Use permanent endowment;
- Remunerate trustees; and
- Merge

The recommendations also extend the decisions that can be made by trustees without Charity Commission approval, for example, around ex gratia payments and where appeals fail or are over-subscribed.

More information on the changes can be found in the briefing [on the PEM website](#).



Charity classifications

The Charity Commission has proposed some further classifications to subdivide the existing classifications. This will allow for example the 52% charities involved in 'education and training' to further explain what they do through a secondary description.

These more detailed 'what', 'how' and 'who' classifications will help the regulator analyse the data provided by charities and help them to understand the number of charities impacted by different risks.

- the 'what' level 1 and level 2 categories capture a charity's purpose(s)
- the 'how' level 1 and 2 categories capture the activities undertaken by a charity to deliver its purpose(s)
- the 'who' level 1 and 2 categories capture who the charity helps (its beneficiaries)

The top level 1 codes are not changing which will allow historic data to be used for comparative purposes. Going forward the more detailed level 2 categories will help give finer definition.

So, for example, the level 1 code of 'Provides education/ advocacy/ advice/ information' is unchanged, but separate 'How' level 2 codes are available for education, advocacy, campaigning and advice/ information to allow the Charity Commission to gain a more nuanced picture of which of these activities a charity undertakes. The level 2 codes are not exclusive, and charities will be able to select all activities that they are involved in.

User testing will take place throughout April to ensure the codes are fit for purpose and charities are able to classify themselves. The Charity Commission asks that any charity interested in user testing to contact them at UserResearchTeam@charitycommission.gov.uk. The codes will be reviewed as needed based on the feedback from this testing.

Newsflash

From 22 April 2022 charities will need to comply with the meeting rules set out in their governing documents

Since April 2020 following the Charity Commission COVID-19 guidance charities have been able to cancel meetings or hold meetings by telephone or online even if their governing document does not allow this. This enabled many charities to continue to operate during lockdown while safeguarding staff and trustees. However, with most restrictions lifted the Charity Commission updated its guidance on the 25 March 2022 to say that from the 22 April 2022 Charities will once again have to comply with their governing document.

Trustees of those charities who have successfully adopted and wish to continue remote or some hybrid options will need to ensure that this is allowable within their governing document or make a change to the governing document. It may require an in person meeting to approve any changes.

More detailed guidance on [alterations to governing documents for unincorporated charities and charitable companies](#) and [governing document guidance for CIOs](#) is available on the Charity Commission website.



Gift Aid protection when income tax rates fall

In the recent Spring Statement, the chancellor announced plans to reduce the income tax rate to 19% from April 2024, which would reduce the amount of Gift Aid for charities.

However, a three-year transition period will effectively maintain what charities can claim from the tax relief at similar levels in the short

term. Documents published alongside the Spring statement noted that a three-year transition period for Gift Aid relief will apply, to maintain the income tax basic rate relief at 20% until April 2027. Without this transitional period the reduction in income tax would have cost the charity sector approximately £250m in lost Gift Aid over three years.

Annual Return updates 2022

The Annual Return for 2022 is expected to be launched at the end of April; updated guidance has been given for charities working outside England and Wales.

The text now clarifies area of operation as the place where a charity delivers its purpose, this applies equally if charities provide funds or grants to other organisations based outside England and Wales.

The Charity Commission gives some examples to assist charities in interpreting the guidance:

Example 1

A London-based charity running an orphanage in Romania would record its area of operation as Romania.

Example 2

A charity based in Cardiff giving a grant to a local NGO based in Yemen to build a school would record its area of operation as Yemen.

Example 3

A charity making a general donation or grant to another registered charity that may operate abroad, does not count as operating abroad.

Minimising the risk of personal data breaches

The ICO (Information Commissioner's Office) has a simple guide available to help small organisations, such as charities, improve the security of their data and avoid it being lost, damaged or stolen.

To try and prevent personal data breaches, the ICO advise the following 10 steps:

1. Store personal data securely (locked cabinets, strong passwords etc.)
2. Implement a clear desk policy
3. Have a policy for remote working
4. Keep the client address database up to date
5. Name documents clearly and consistently
6. Use blank templates and store them separately
7. Review access controls (e.g., different levels of accessibility depending on staff)
8. Train staff on data protection responsibilities
9. Back up your systems
10. Be watchful when staff leave

Regulating charities offering complementary & alternative medicine therapies

The final inquiry report into Gerson Support Group was published in March 2022 and alongside that report the Charity Commission have clarified their approach to complementary alternative medicine therapies (CAM therapies).

Essentially to be deemed to provide public benefit, and therefore have charitable status, an organisation that claims to offer a cure or treatment must provide objective scientific evidence. Where the therapy promises comfort or relief it may be possible to offer more subjective evidence, such as patient testimonials, to demonstrate public benefit.

This guidance will be applied at the point of registration. The Charity Commission notes that their work scrutinising the activity of CAM organisations continues, and that they encourage all CAM charities to consider the public benefit requirement and ensure that their own activities deliver clear public benefit. If concerns are raised, and the organisation cannot demonstrate public benefit, then the Charity Commission will ultimately take action to remove the entity from the register.





Jayne Rowe
jrowe@pem.co.uk



Kelly Bretherick
kbretherick@pem.co.uk



Judith Pederzoli
jpederzoli@pem.co.uk



Michael Hewett
mhewett@pem.co.uk



Nikki Loan
nloan@pem.co.uk



Kate Millard
cmillard@pem.co.uk



Kathryn Hebden
khebden@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



For General Information Purposes only
Please note that this brochure is not intended to give specific technical advice and it should not be construed as doing so. It is designed merely to alert clients to some issues. It is not intended to give exhaustive coverage of the topics. Professional advice should always be sought before action is either taken or refrained from as a result of information contained herein. The firm's full name and a full list of Partners is available on our website.