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Charities & Not for Profit newsletter



Investing in line with the charity's purpose & values

The Charity Commission has published a consultation, which closes at the end of March, inviting charities to share their approach to investing in line with their purpose and values.

Charities are coming under increasing pressure to invest assets in line with the charity's purpose and values. Historically, charities have focussed on ensuring the best financial returns without considering how investments reflect on the charity's aims. The Commission regards responsible investing as demonstrating the charity's purpose has been considered when making investment decisions.

Public expectations and awareness are increasing, especially with the emphasis on transparent

reporting and many charities have responded by reviewing their investment portfolio to ensure they are investing responsibly.

Charities are also considering the longer-term financial sustainability of an investment portfolio. Evidence indicates that removing industries or companies from the portfolio which do not align with the charity's aims does not necessarily impact on the overall financial return.

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Reporting serious incidents involving a partner

Guidance has been released by the Charity Commission reminding charities to make a serious incident report when an incident has occurred with a charity partner (UK or internationally) which materially affects the charity, staff, operations, finance or reputation.

The Charity Commission define partners as:

- A sub-contractor or delivery partner
- Subsidiary trading company
- An organisation that receives funding from the charity
- Another charity that is linked to the charity i.e. a federation structure

The nature and severity of the incident should be considered but guidance on the three aspects to consider when reporting are as follows:

1. *The charity's funds, brand, people or an activity it funds is involved* – These are the areas of

highest risk and where it is likely an incident is reported. It should be for the trustees to decide if an incident is serious enough to be reported.

2. *The above aspects are not involved but it could have a significant impact on the charity* – incidents are less likely to be reported when the charity does not have close links to the partner. However reputational risk must be considered. There may also be issues as to whether the partner involved remains capable of continuing to deliver the charity's work.
3. *The above aspects are not involved and there is no significant impact on the charity* – normally such an incident would not require a report, however internally the charity should consider if there are any areas for improvement or policies/procedures which require review.

Reporting fundraising activities within the Trustees' Report - Guidance on good reporting

Fundraising activities are not being correctly reported in over 50% of the annual reports reviewed by the Fundraising Regulator.

The new reporting requirement, under Section 13 of Charities (Protection and Social Investment) Act 2016 came into effect a year ago and requires charities to include a statement regarding fundraising within the trustees' report.

The reporting requirement is mandatory for all larger charities whose accounts are subject to audit under Section 144 of the Charities Act 2011.

The findings are based on a review of 106 annual reports from charities where over £100k was spent on fundraising activities and the charities pay the Fundraising Regulator's levy.

Only 43 of those reviewed were found to be compliant; 35 contained too little information with the remainder including some information but with no dedicated statement.

Missing information included:

- Who carried out the fundraising and how
- What fundraising regulation code charities have signed up to
- How charities monitor any fundraising for them
- How charities protect vulnerable people
- How many complaints have been received

New guidance has been published by The Fundraising Regulator on what to include in the statement to ensure full compliance. An 'exemplar' report for a fictitious charity has been published which can be used as a template. This is provided in full at the end of this article.

What can charities do better to meet the requirements?

The 6 points below are the areas that must be covered in a trustee's report:

1. *The Charity's approach to its fundraising activities and details of any fundraising done on its behalf* – areas to consider include how campaigns are run, what they are and how successful they are. If run by third parties, details should be given on methods used and how the public are asked to participate.
2. *Any voluntary fundraising regulation scheme/standard the charity or those acting on its behalf were signed up to* – The Fundraising Regulator is the only voluntary regulation scheme for fundraising operations in England and Wales.

Registering ensures compliance with the Act and a statement confirming the charity is compliant with the Code of Fundraising Practice should be included in the report.
3. *If the charity has failed to comply with the scheme* – Details of any areas of non-compliance should be disclosed, including details of any investigations carried out by the Regulator.
4. *How fundraising activities carried out on the charities behalf have been monitored* – Details of how the charity manages and monitors fundraising completed by third parties, including how standards are maintained and how contracts are managed (i.e. training and support).

5. *Number of complaints received* – details should be disclosed on the specific number of complaints received. Systems should be in place to record and report on any complaints.
6. *Action taken to protect vulnerable people and the wider public from fundraising activities including unreasonable intrusion, persistent methods to receive donations and undue pressure on giving donations* – details should be given on the practical activities implemented to ensure protection.

Discussing the above compliance matters in a positive manner gives donors confidence about the charity's compliance with regards to best practice when fundraising.

Annex A: Exemplar fundraising report for Our Hospice charity

Donors to Our Hospice can be assured that we comply with the regulatory standards for fundraising. We are registered with the Fundraising Regulator and are committed to the Fundraising Promise and adherence to the Code of Fundraising Practice. We encourage our fundraising service providers we engage with to also be signed up to the code. This report covers the requirements charities must follow as set out in the Charities Act 2016.

It has cost us £10 million to provide our hospice services this year. Roughly a third of this came from statutory funding, a third came from our permanent endowment and we need to raise the balance through fundraising.

Our fundraising effort involves encouraging donations and gifts in wills, running events and operating a lottery. Our in-house fundraising team sometime engage professional fundraisers to help us deliver fundraising initiatives. We aim to ensure those agencies we employ also observe the highest standards in terms of fundraising practice.

This year, we ran our popular hospice 10k event and were supported by 5,000 runners. Individual donations were static but amount raised from legacies increased.

We are registered with the Fundraising Regulator and comply with all the relevant standards set out in the Code of Fundraising Practice. Several of our in-house fundraising team are members of the Institute of Fundraising.

We use third-party suppliers to help us raise funds particularly where we do not have the expertise in-

house. We have safeguards in place when working with suppliers so that we protect our supporters and the reputation of our charity.

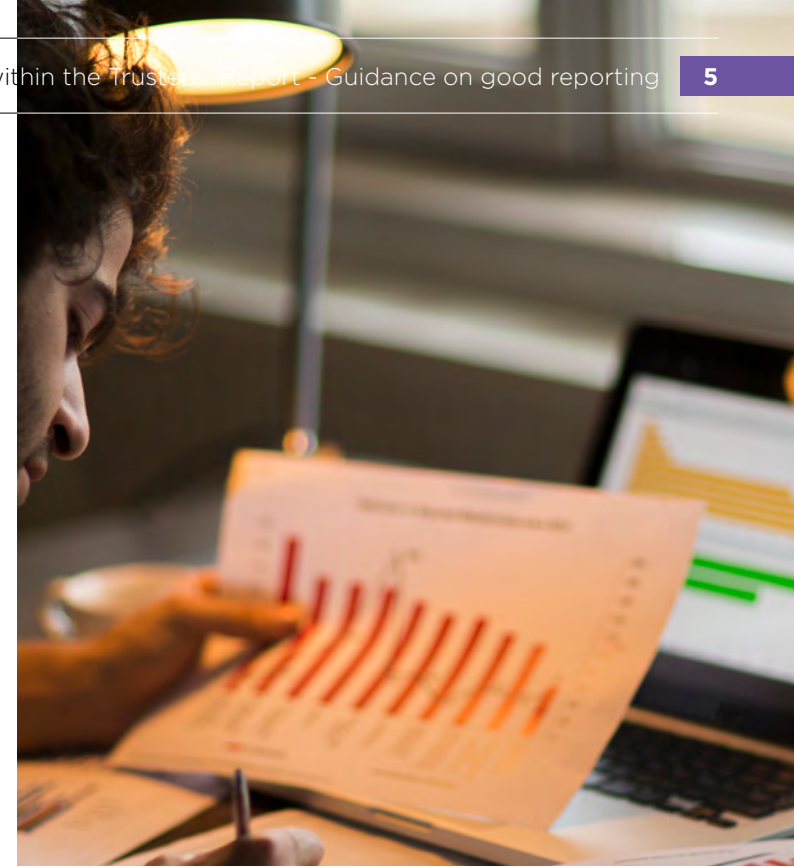
We ensure that the correct safeguards are in place with our suppliers and those who fundraise on our behalf. We require them to confirm that they comply with the Code of Fundraising Practice.

Our website outlines our complaints policy for the public and clearly explains how an individual can complain. We received 10 complaints in the 2017-18 financial year. In contrast, last year we received 20 so this represents a 50% decrease.

We responded to all complaints within 10 days. Complaints are dealt with in-line with our fundraising complaints policy. Most serious complaints are escalated to our Senior Leadership Team (SLT) and trustees so they can consider lessons learnt. SLT and trustees also consider an annual report about complaints. We report to the Fundraising Regulator on the totality of our complaints.

We have published our vulnerable persons policy on our website. We are also signed up to the Fundraising Preference Service to enable individuals to opt out from receiving fundraising communications from us. We actioned 15 requests from this service last year.

In addition to our policy we have an agreed operating procedure to protect vulnerable people. Our fundraisers (both staff and third party) are familiarised with the code of conduct to ensure that it is applied properly.



National living wage increase

From 1 April 2020, the National Living wage will be increased, affecting 2.8million people. This equates to an annual pay rise of up to £930 for a full-time worker. The increases are as follows:

- Apprentices – 6.4% increase from £3.90 - £4.15
- Under 18s – 4.6% increase for £4.35 to £4.55
- 18-20 year olds – 4.9% increase from £6.15 - £6.45
- 21 -24 year olds – 6.5% increase from £7.70 - £8.20
- Over 25 year olds – 6.2% increase from £8.21 - £8.72



Fundraising Preference Service update

A recent update to the Fundraising Preference service (FPS), via the Fundraising Regulator means members of the public can stop communications from charities they no longer want to hear from.

A list of charities that have failed to action an FPS request will be published, meaning these charities will have breached the Code of Fundraising Practice. To avoid being included on the list, charities can enrol to be notified if they receive such a request. For more information email fps-support@fundraisingregulator.org.uk

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Zero rating available for e-newspapers - implications for the charity sector

The Upper Tribunal recently published its decision in *News Corp UK & Ireland Limited v Commissioners for HMRC* [2019] UKUT 0404 (TCC). It held that e-newspapers qualify for zero rating in the same way as printed newspapers.

The First-tier Tribunal (FTT) had found in favour of HMRC. Its position was that although the content in the digital editions of *The Times* and *The Sunday Times* was “fundamentally the same or very similar” as that of the printed editions, the digital versions could not qualify for zero rating as they are supplies of services rather than supplies of goods.

Both parties accepted that the supply of digital newspapers is a supply of services rather than a supply of goods. The FTT rejected News UK’s argument that under the principle of fiscal neutrality, the similarities between the print and digital versions of the newspapers (viewed from the perspective of consumers) required them to receive the same VAT treatment. It held that EU rules precluded the extension of the scope of zero-rating provisions beyond their 1991 limits. As only printed goods were zero-rated in 1991, zero-rating could not be extended to services. The FTT accepted HMRC’s position that *Talacre Beach Caravan Sales v C&E Comrs* C-251/05 [2006] STC 167 was pertinent to the matter. In that case, it was held that extending zero rating to the contents of caravans could not be permitted.

News Corp UK’s appeal raised two issues:

- (a) whether the digital editions of the newspaper titles are “newspapers” and, if not,
- (b) whether the application of the principle of fiscal neutrality nevertheless requires zero-rating.

The Upper Tribunal rejected the argument that extending zero rating to supplies of digital newspapers would contravene EU rules. Disagreeing with the FTT’s reliance on *Talacre*, the Upper Tribunal pointed out that although there is UK legislation which explicitly excludes

the contents of caravans from the zero-rating in respect of the caravans themselves, there is no such provision excluding digital newspapers from zero-rating. The question, instead, is whether as a matter of the UK principles of statutory interpretation the term “newspapers” is to be construed as including the digital versions that have come into existence since 1991.

The Upper Tribunal held that the sole reason that digital newsletters were not zero rated in 1991 was because they did not exist and further that the digital newspapers were within the genus of things that the pre-1991 legislation did exempt. The Upper Tribunal therefore held that extending zero rating to digital versions of newspapers did not offend EU rules.

The Upper Tribunal also held that the VAT legislation authorises zero rating for services as well as goods and thus the characterisation of an item as ‘goods’ or ‘services’ was not fundamental to the zero-rating question.

As the contents of e-newspapers are fundamentally the same as those of the printed versions, the Upper Tribunal held digital editions are ‘newspapers’ thus zero-rating is available.

Relevance for the Charity Sector

Although the case relates specifically to digital newspapers, the arguments accepted by the Upper Tribunal could equally apply to e-journals, e-books, e-newsletters etc. If zero-rating is not strictly confined to the printed versions of written material, this could have implications for charities who make supplies of e-journals and/or e-newsletters.

HMRC is expected to appeal the decision in *News Corp UK*. In addition, HMRC could decide to narrowly interpret the decision to apply only to newspapers and may also determine that retrospective claims were not possible. However, there is reason for hope that this decision could change the landscape of the VAT treatment of digital versions of written material. Please watch out for updates in future editions of this e-newsletter.

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Government launches charity safeguarding portal

Every organisation that delivers charitable activities has a responsibility to safeguard people from harm. This includes staff members, volunteers or others that come into contact with the charity through its activities.

As a result, the government has launched a new safeguarding digital portal which can be found [here](#), a tool to help support charities when handling safeguarding concerns. The portal also includes a step by step guide to assist charities when investigating safeguarding issues.

The government has also awarded nearly £600k in funding to six charities to help promote the guidance.



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