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Charity News

A roundup of the latest accounting, taxation and governance issues that impact how you run your charity.

Charities need to get things right

Due to media pressure, following the Olive Cooke scandal and the demise of Kids Company, changes are being made in relation to fundraising regulations, governance and reporting on significant matters. These changes are either being legislated for or are the subject of consultation.

We hope you find our roundup informative, as charity trustees and senior management, it is important to keep abreast of these changes and their implications in order to ensure that your charity is not in the news for the wrong reasons!

Confidence in the Charity Sector

The Charity Commission in England and Wales (CCEW), has as a primary aim the promotion of a charity sector in which the general public can have confidence and in which charities themselves can flourish. Recent scandals and a report show that public confidence has fallen to a new low.

The findings in a report by Populus for CCEW show that trust in charities has fallen from 6.7 out of 10 in 2014 to 5.7 this year.

The report finds '*that the fall in trust and confidence can be attributed to critical media coverage of charity practices, distrust about how charities spend donations, and a lack of knowledge among the public about where their donations go. Perceptions of aggressive fundraising tactics have also contributed to the decline in trust.*'

Report: goo.gl/Xayvsj

Have your say

Now that charities have had the opportunity to work with the new SORP, the SORP making body and SORP Committee are seeking feedback, both on the structure of the SORP and its content.

The aim is to produce an exposure draft SORP in 2018, shortly after the planned triennial review of FRS 102, with the revised SORP taking effect from 2019. Although 2019 may feel like a long way off, ensure you have your say in the future of the SORP and how your accounts will be presented.

Consultation: goo.gl/ojFd3V
Closing date: 11 December 2016

Fundraising Regulation

In England, Wales and Northern Ireland the new Fundraising Regulator (FR) will oversee standards for fundraising and deal with complaints about charity fundraising. A full complaints process is now available on the FR website, alongside a discussion paper on its proposed funding model for a levy and registration.

In England and Wales a Memorandum of Understanding has been published which confirms that all complaints about fundraising will be first assessed by the FR. If the FR decides that a complaint relates to a wider administrative or trustee issue, it can then be referred on to the CCEW. The CCEW will subsequently inform the FR of any statutory inquiry or operational compliance case opened on fundraising practices.

www.fundraisingregulator.org.uk

Register of People with Significant Control

Is your charity's legal structure that of a charitable company? If so then you need to be aware that from 6 April 2016 there is now a requirement to prepare and keep updated a Register of People with Significant Control (PSC register). This requirement applies to all companies, including charitable companies.

Charitable companies are required to take reasonable steps to find out whether there are people with significant control over their company in order to prepare the register and must then keep it up to date and file relevant information at Companies House. Failure to comply with the requirements could lead to the directors / trustees, or identified PSC committing a criminal offence and being liable to face a fine or imprisonment or both.

If this is an area you need help with then please contact us.

Guidance: goo.gl/AqsOQn

Gift Aid Small Donations Scheme

The aim of the Gift Aid Small Donation Scheme (GASDS) is to support the charity sector in circumstances where it is not feasible or practical to obtain a Gift Aid declaration from individual taxpayers making a cash donation, for example church plate or bucket collections. The recent HMRC consultation outlined a number of proposals for reform which include:

- removing the requirement for charities to be registered for Gift Aid for two full years before using GASDS
- requiring charities to have made problem-free Gift Aid claims in the previous tax year (rather than in two of the previous four years)
- allowing donations by contactless debit or credit card
- minor changes to the community buildings rules.

The consultation has now closed and responses from a wide range of charities are currently being considered. We will update you on the results of the consultation and any changes to legislation.

From 6 April 2016 the maximum donation that you can claim a GASDS top-up payment on is the lower of:

- 10 times the amount of donations you have claimed Gift Aid on - known as 'the matching rule'
- small donations of up to £8,000 (an increase on the previous limit of £5,000).

Model Gift Aid declaration

In April 2016, HMRC simplified and shortened the model Gift Aid declaration. However, in doing so it has clarified that if an individual has not paid sufficient tax to cover the tax reclaimable by the charity on the donation, the individual is responsible for paying the difference to HMRC.

The new style declarations should have been in use from the 6 April 2016. However:

- if an individual has signed an old style declaration form which covers multiple donations, there is no need for that individual to make a new declaration
- if a charity holds stocks of printed materials that were ordered and printed before 21 October 2015, that stock can continue to be used.
- A declaration by a donor can alternatively be made verbally or online (eg via a website). Whichever method is used, charities need to ensure they use the updated wording.

Retail Gift Aid Scheme Changes

HMRC have updated their procedures for charities operating charity shops where donors agree to donate the sale proceeds of the goods to the charity using the Gift Aid system to increase the value of donations. Updated letter templates, which must be sent to donors, are now available.

Templates: goo.gl/S3kjCl

Changes to legislation in England and Wales

The Charities Protection and Social Investment Act 2016, which only applies to charities in England and Wales, is now law. The Act has been introduced following a number of scandals in the Charity Sector such as the tragedy associated with Olive Cooke and fundraising ethics, and the demise of Kids Company.

There are four key areas:

- **the power to make social investment** is to be underpinned by statute which will be particularly helpful for charities wishing to make social investments or to benefit from social investment by other charities. **(from 31 July 2016)**
- **charities working with professional fundraisers / commercial participators** will be required to ensure the fundraising agreements are compliant with the updated legislation. Larger charities will also be required to report on fundraising in their annual reports. **(from 1 November 2016)**
- **more regulatory powers** for the CCEW including giving official warnings. **(from 31 July 2016)**
- **CCEW disqualification** of people from serving as trustees or senior management positions at a charity. **(from 1 October 2016)**

How this new law will impact your charity depends on whether you make social investments and / or engage with professional fundraisers.

Legislation: goo.gl/IrY0Bc

Update Bulletin 1 and early adoption

The Update Bulletin 1 was issued early in 2016 and allows for small charities, those with income under £500,000 to exclude a statement of cash flows when preparing accounts under the SORP 2015 (FRS 102).

The Bulletin is effective for accounting periods beginning on or after 1 January 2016 with early adoption permitted for accounting periods beginning on or after 1 January 2015 except where prohibited by regulations or charity or company law. It also updates the:

- measurement basis of the carrying value of stock held for distribution at no or nominal consideration and
- maximum period over which goodwill and other intangibles can be amortised from five to ten years.

The changes cannot be 'cherry picked' and thus if you want to early adopt the Bulletin then you must adopt all of the changes.

Charities operating in Scotland (including cross border charities) are prohibited from early adoption.

Bulletin: goo.gl/9AeZ9b

Report matters of material significance

Auditors and independent examiners in England and Wales, Scotland and Northern Ireland have a duty to report to the relevant Regulator matters of material significant which they discover in the course of carrying out their audit or examination work. None of the legislation requiring such a report specifies exactly what constitutes a matter of material significance, and historically CCEW and OSCR produced a list of such matters to illustrate which were reportable. In light of experience since the original list was produced, and of the establishment of CCNI, the three Regulators have agreed to review the list which has been the subject of a consultation.

The new draft requirements are to report:

- the issue of a modified audit opinion, emphasis of matter or qualified independent examiners report, together with any action subsequently taken by that trustee
- where trustees have not taken action on matters identified by the auditor / examiner in previous years
- where auditors / examiners, in the course of their work, come upon evidence that conflicts of interest have not been managed in accordance with the Regulators' guidance, or that related party transactions have not been fully disclosed in accordance with the SORP.

Although this Consultation may not appear to directly affect charities, it is important for charity trustees and senior management to be aware of the responsibilities of the auditor / independent examiner and the circumstances when they should be reporting matters.

Indeed the Regulators do not look kindly on a charity whose auditor / examiner reports a matter of material significance and the charity itself has not reported a serious incident. If trustees fail to report a serious incident the CCEW may consider this to be mismanagement and take regulatory action.

We will update you on the outcome of the consultation.

Consultation: goo.gl/jFmxvp
Closing date: 11 September 2016

Official warnings - Consultation

The CCEW is consulting on how they propose to use new powers to issue an official warning where they consider there has been a breach of trust or duty or other misconduct or mismanagement within a charity.

The Consultation outlines:

- the circumstances in which the new powers may be used
- how the issuing of an official warning may be published and
- how affected charities or trustees may make representations to have the warning reconsidered or removed.

We will advise of the outcome of the consultation.

Consultation: goo.gl/kR4uln
Closing date: 23 September 2016

Power to disqualify - Consultation

The CCEW have the statutory power to disqualify individuals from acting as a trustee, which would also disqualify such individuals from holding senior management positions within the charity or charities concerned. The power enables the CCEW to disqualify, for a proportionate period, individuals who are unfit to be a trustee so as to protect an individual charity, charities in general or other trustees and the public. The CCEW may only make such an order where it is satisfied of three things:

- one of six conditions are met, including being cautioned or convicted of an offence or found by HMRC not to be a ‘fit and proper person’ to be the manager of a body or trust. Other conditions relate to misconduct or mismanagement in relation to a charity, or to acting in some way that is likely to be damaging to public trust and confidence in a charity or charities
- the individual is unfit to be a trustee and
- such an order is desirable in order to protect public trust and confidence in the sector.

The CCEW recognises that this is a significant new power and has issued a policy paper showing how it proposes to use it. A consultation, now closed, sought views about its proposed approach. Once the feedback has been analysed, we will advise you of the outcome.

Consultation: goo.gl/ayuQmO

Automatic Data Exchange

The Common Reporting Standard (CRS) is an information standard for the automatic exchange of information and requires certain institutions to collect and report data to HMRC for exchange with other countries. The overall aim of the CRS is to increase transparency and combat tax evasion, however it could affect your charity if the charity is deemed to be a financial institution. For example a charity may be caught where it derives a significant amount of its income from an investment portfolio.

CRS came into force on 1 January 2016 and reporting to HMRC must be completed by 31 May 2017. If you need help determining whether this will affect your charity please contact us.

Independent examination in England and Wales

With the increase in audit thresholds to £1,000,000 of income, significant numbers of additional charities will now fall within the bands which permit independent examination of their financial statements.

The revision of CC32 – Independent examination of Charity Accounts: Directions and guidance for examiners is out for consultation. The number of Directions has increased from 8 to 13. The order of some of the Directions has changed and guidance has been reworded, using a plain English approach, emphasising the use of the word ‘should’ meaning that this is what is expected of the examiner.

Additional guidance on conflicts of interest / related parties and financial sustainability has been added. New reports for company and non-company charities have also been included.

It is not expected that the work your independent examiner performs will be substantially changed however the report issued in your accounts will look different.

We will advise you of any changes impacting your charity.

Consultation: goo.gl/zeVFUO
Closing date:
30 September 2016

Some useful updated publications and news:

Charities and litigation: a guide for trustees (CC38)	August 2016 **goo.gl/Jr7VPH**
Charities and investment matters: a guide for trustees (CC14)	August 2016 **goo.gl/QDXbo3**
Charity Commission News: Issue 54	July 2016 **goo.gl/vkI1LI**
Charity fundraising: a guide to trustee duties (CC20)	June 2016 **goo.gl/H0vuIS**
Charity Commission News: Issue 53	April 2016 **goo.gl/w5IU5V**
Accounts monitoring: The quality of small charity accounts	April 2016 **goo.gl/SG3Xor**
Accounts monitoring: The quality of charity accounts 2016	April 2016 **goo.gl/TCBS4i**
Accounts monitoring: Public benefit reporting by charities 2016	April 2016 **goo.gl/Q6Ko42**
What the Charity Commission expects from trustees in its casework	March 2016 **goo.gl/4Jl4d4**
Trustees trading and tax: how charities may lawfully trade (CC35)	February 2016 **goo.gl/ZZPy7P**