

In this issue we look at

Financial management

The Charity Commission's updated guidance for trustees

Changes to Gift Aid declarations

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Editor's welcome

I write this at the end of a few months when the sector has been battered by some high profile charity collapses, further controversy around fundraising activities, carried on by some of the largest charities in the sector, and continued calls for transparency around executive pay. The problem with all of this is that although the number of charities concerned only represent a minority of the 160,000 registered charities in the UK, news of this nature damages public trust in the charity sector.

So it is essential that your charity is properly run, that trustees act in the best interests of the charity and that they are aware of what is going on in the fundraising team. In terms of charity governance the articles in our newsletter will provide some useful guidance, all of them important for charities and not for profit organisations to consider.

To begin, Nicola Adams talks us through the importance of good financial management. This is something I discuss regularly with clients, and a proactive approach is essential to ensuring the continued success of any charity.

The Charity Commission has recently updated its guidance 'The Essential Trustee' and I have summarised the main points. Rachelle Rowbottom brings us right up to date with where we are with Gift Aid declarations, and finally, Simon Buchan considers the long debated non-business question in VAT. So, lots to think about. I hope you find this newsletter useful - if you have any questions, please do get in touch.



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Sound financial management

Nicola Adams takes a look at the importance of sound financial management

Some high profile charity collapses over recent months have reminded us of the vital importance of the sound financial management of charities.

Ultimately, the trustees are responsible for keeping adequate accounting records that are both sufficient to show and explain the charity's transactions and to disclose the financial position of the charity with reasonable accuracy at any time.

A good financial management process allows a charity to identify and fully cost all the resources that are needed for the provision of its services. This is key when considering what to charge for services, applying for grants or bidding for contracts for public service delivery.

As a minimum, an annual budget should be prepared which identifies how the charity's activities will be resourced and what the expected costs will be. This budget should initially be based on historical results and rolled forward to incorporate future expectations for fluctuations in income and expenditure.

The budget should be regularly compared to actual income and expenditure, ideally on a monthly basis. Significant variances to the budget should be investigated. This ensures financial decisions can be made in a timely manner to mitigate the risk of a decline in income or unexpected expenditure. A proactive rather than reactive decision making strategy can thus be implemented.

If you are involved in budget setting

for the forthcoming year don't forget to consider the impact of the National Living Wage and auto enrolment.

The new National Living Wage, which is essentially a new wage rate for the over 25s, comes into force in April 2016. The rate will be set at £7.20 per hour and is expected to increase annually. It is important for charities to consider the effect of this new rate, and also additional auto enrolment pension costs, on the charity's finances. For many charities where staff costs are a high proportion of total expenditure this may have a very significant impact.



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Trustees - what you need to know

Jane Marshall looks at the Charity Commission's updated guidance for trustees.

CC3: The essential trustee: what you need to know, what you need to do

Trustees have independent control over, and legal responsibility for, a charity's management and administration. They play a very important role, almost always unpaid, in a sector that contributes significantly to the character and wellbeing of the country. Trustees must take their responsibilities seriously as the position is not just one with a title.

The guidance set out in the revised CC3 is summarised below.

Trustees' duties at a glance

In the first instance you need to make sure you are eligible to be a charity trustee.

You must be at least 16 years old to be a trustee of a charity that is a company or a charitable incorporated organisation (CIO), or at least 18 to be a trustee of any other charity.

You must be properly appointed following the procedures and any restrictions in the charity's governing document.

You must not act as a trustee if you are disqualified under the Charities Act, including if you:

- have an unspent conviction for an offence involving dishonesty or deception (such as fraud)
- are bankrupt or have entered into a formal arrangement (eg an individual voluntary arrangement) with a creditor
- have been removed as a company director or charity trustee because of wrongdoing.

There are further restrictions for charities that help children or vulnerable people.

Ensure your charity is carrying out its purposes for the public benefit

You and your co-trustees must make sure that the charity is carrying out the purposes for which it has been set up, and no other purpose. This means you should:

- ensure you understand the charity's purposes as set out in its governing document
- plan what your charity will do, and what you want it to achieve
- be able to explain how all of the charity's activities are intended to further or support its purposes
- understand how the charity benefits the public by carrying out its purposes.

Spending charity funds on the wrong purposes is a very serious matter and in some cases trustees may have to reimburse the charity personally.

Comply with your charity's governing document and the law

You and your co-trustees must:

- make sure that the charity complies with its governing document
- comply with charity law requirements and other laws that apply to your charity.

You should take reasonable steps to find out about legal requirements, for example by reading relevant guidance or taking appropriate advice when you need to.

Act in your charity's best interests

You must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes

- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body
- not receive any benefit from the charity unless it is properly authorised and is clearly in the charity's interests; this also includes anyone who is financially connected to you, such as a partner, dependent child or business partner.

Manage your charity's resources responsibly

You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:

- make sure the charity's assets are only used to support or carry out its purposes
- avoid exposing the charity's assets, beneficiaries or reputation to undue risk
- not over-commit the charity
- take special care when investing or borrowing
- comply with any restrictions on spending funds or selling land.

You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.

Act with reasonable care and skill

As someone responsible for governing a charity, you:

- must use reasonable care and skill, making use of your skills and experience and taking appropriate advice when necessary
- should give enough time, thought and energy to your role, for example by preparing for, attending and actively participating in all trustees' meetings.

Ensure your charity is accountable

You and your co-trustees must comply with statutory accounting and reporting requirements. You should also:

- be able to demonstrate that your charity is complying with the law, well run and effective
- ensure appropriate accountability to members, if your charity has a membership separate from the trustees
- ensure accountability within the charity, particularly where

you delegate responsibility for particular tasks or decisions to staff or volunteers.

The full guidance is available from the Charity Commission www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3



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Changes afoot for Gift Aid declarations

Rachelle Rowbottom gives an insight into upcoming changes to the wording of Gift Aid declarations.

HMRC, together with sector bodies, has been reviewing the wording of Gift Aid declarations since the Gift Aid and digital giving consultation which took place in 2013.

There was thought in the sector that the existing wording may be preventing some donors from using the Gift Aid scheme and therefore that the sector was losing out on vital funds.

Following months of discussion between HMRC and sector officials, together with analysis of donor behaviour, new wording has now been agreed. At the time of writing it was expected that HMRC will publish the new model declaration, together with associated guidance in early October.

It is understood that the references to Council Tax and VAT, which have caused confusion for some, will be removed, and that the overall length of the

declaration will be shorter than the current version.

The new wording will clarify the position on liability in the event that an incorrect declaration is made. It is expected this will state that if a donor pays insufficient tax to cover the Gift Aid reclaimed by the charity, then the donor will be liable to repay any difference to HMRC.

We are anticipating that there will be a transitional period that will run up to 5 April 2016 and that declarations in the existing format will continue to be valid until that date. In addition, HMRC has confirmed to sector bodies that enduring declarations that are currently in place will be protected.

Charities need to plan for these changes to ensure that they are compliant within the relevant time frames. It is hoped that HMRC will take a practical approach during Gift Aid audits

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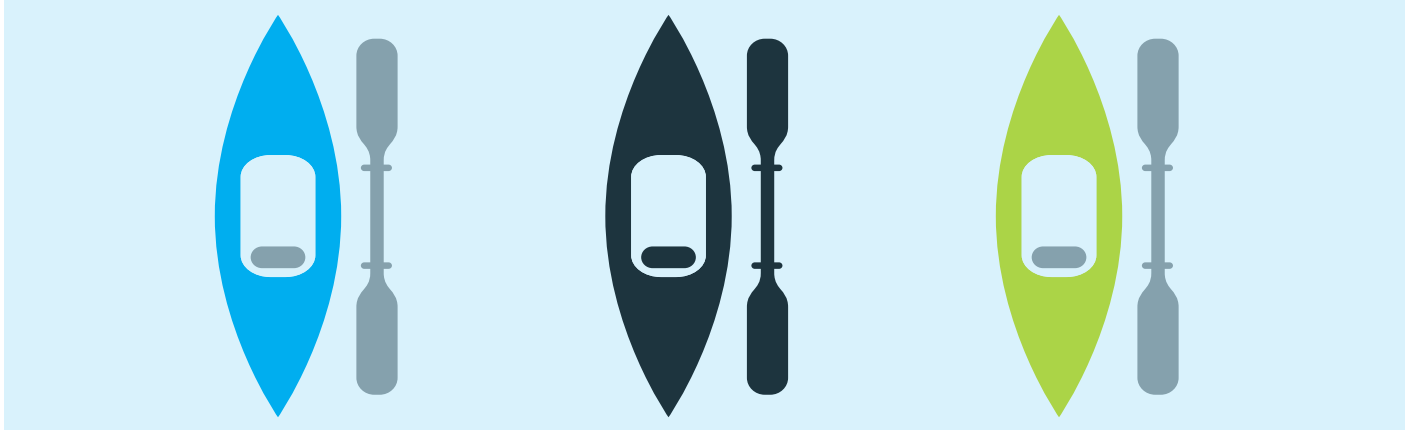
over coming years. But if you feel that your charity will be unable to comply for a specific reason, you should contact HMRC on an individual basis to see if any special arrangements can be agreed. We would expect this to be the exception rather than the norm!



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VAT: Longridge on Thames

Simon Buchan asks the non-business question – has anything changed?



HMRC has received permission to appeal to The Court of Appeal over the decisions made by both the First Tier and Upper Tax Tribunals regarding charity Longridge on Thames. These tribunals had found that Longridge, which runs an outdoor activity centre for children, was not in business for VAT purposes and could therefore have a new building constructed on a VAT zero rated basis.

From the introduction of VAT to the present day the question of whether charities undertake activities by way of business has been a tricky one. HMRC has never provided clear guidance on this issue and the tax tribunals often provide contradictory decisions when asked to do so.

One of the major area of disputes between HMRC and the charity sector has been whether the absence of a profit motive and the pursuance of an activity in the furtherance of a charity's aims and objectives constitutes a business activity.

HMRC, to be fair, has held a constant view that where there is a supply of goods or services in return for a consideration, there is a business activity, even if the supplier is a charity pursuing its aims and objectives and is not seeking to make a profit from that activity. Notwithstanding this, the VAT Tribunals arrived at decisions in cases such as Yarburgh and St Paul's in favour of the charity concerned, placing reliance on the lack of a profit motive and the fact that each charity was following their own charitable aims and objectives.

So why am I musing on this issue now?

In 2009 the European Court released its judgement in what is known as the "Finland" case which HMRC believes supports its view that if there is a supply

of goods or services for a consideration it should be regarded as a business activity even if there is no intention to make a profit.

The "Finland" case considered whether the provision of legal services to individuals (under the Finnish equivalent of legal aid), was a business activity where consideration was based on the individual's ability to pay and in no case exceeded 75% of the cost of the services. In other words, there was always a charge made for the services provided, but never an intention to make a profit. The European Court ruled that notwithstanding the absence of a profit making motive there was a supply of legal services in return for a payment from the recipient.

Returning to Longridge, it appears that they do make supplies of goods and/or services for a consideration, but the First Tier and Upper Tax Tribunals have both accepted that the absence of a profit motive and the pursuance of their charitable aims and objectives meant that the activities undertaken by Longridge were non-business following the principles laid down in Yarburgh and St Paul's, effectively ignoring the European Court judgement in the "Finland" case.

As I mentioned at the start of this article, HMRC has received permission to appeal Longridge to the Court of Appeal and therefore for the first time in a number of years the business/non-business issue will be considered by senior UK judges. It will be interesting to see what their decision is and we may yet receive some proper guidance from the courts as to what constitutes a business activity and therefore some much welcome clarity on this issue. Watch this space.



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