

## In this issue we look at:

- VAT update
- Lords Select Committee report
- Reserves policies guidance
- Trustees - what should you be asking?
- News in brief from the Charity Commission

## Editor's welcome

The last few months have been unprecedented and awful with two terrorist attacks in London, one at the Manchester Arena and the dreadful fire at Grenfell Tower in North Kensington. These atrocities have affected all elements of our society. It is at times like these that we need communities to pull together and support one another and there is no sector better placed to assist in this process than the charity sector.

Even before recent events the Lords Select Committee had published its

report on charities – 'Stronger charities for a stronger society', some highlights of which are included in this newsletter. The title could not be more apt.

Our specialist team have plenty of updates and commentary which will hopefully make this newsletter a useful read for you.

Have a great summer.



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## VAT update

In the last few years the charity sector has been in dispute with HMRC on a number of issues. In this article Simon Buchan, Head of VAT services at BHP provides an overview of the state of play on some of the more important cases.

### The British Film Institute (BFI)

This long running dispute appears to have been decided, finally, in favour of HMRC. The question at issue was whether HMRC could limit the scope of the cultural exemption in the UK to certain prescribed activities such as entry to zoos or museums. The case reached the European Court of Justice [CJEU] who ruled that HMRC could limit the scope of the exemption and consequently BFI's claim that admission charges to their cinema should be regarded as VAT exempt appears to have failed.

Many charities who have submitted claims for VAT refunds in the hope that this case would widen the scope of the cultural exemption will be disappointed because the outcome means that those claims will fail.

### University of Cambridge

The issue at stake in this case is how much (if any) input VAT charities may reclaim on the charges made by investment fund managers on their services. The University has successfully argued at both the First and Upper Tax

Tribunals that the VAT on these charges should be regarded as an overhead cost with partial VAT recovery allowed according to their partial exemption calculation.

HMRC have appealed and the case is due to be heard in the Supreme Court later this year – having been delayed from the original hearing date in January. It is possible that the case will be referred to the CJEU and so the final outcome may not be known for at least 2 years.

Charities which incur investment management fees should consider submitting protective claims for the last 4 years to protect their position in the event the University is eventually successful.

### Brockenhurst College

In another long running dispute the CJEU has ruled in favour of Brockenhurst College that their supplies of catering, hairdressing and entertaining services may be regarded as VAT exempt. Normally supplies of catering and hairdressing services made to the public attract VAT at the standard rate.

In this case the CJEU agreed that the services which were provided by the students under the supervision of their tutors formed part of their course of study by providing the opportunity to obtain practical experience of serving the public. In addition the CJEU considered that the fact that the services were offered to a limited number of people at 80% of their cost meant that they were not in direct competition with commercial providers.

The CJEU agreed with the college that the provision of services in these circumstances was a supply closely related to education and should therefore be regarded as exempt from VAT.

Educational establishments (including academies) who supply services to the public on this basis should now consider submitting claims for the last 4 years to recover any output VAT that they have declared on these activities.



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# Lords Select Committee report

The report of the House of Lords Select Committee on Charities published in March came up with 100 conclusions. In the first of a series of articles Jane Marshall looks at some highlights.

The key recommendations in relation to trustees, accountability and the impact of Brexit are set out below. The importance of trustee training is evident as well as the need to ensure the skill set and diversity of the trustee Board is addressed. Impact reporting is again raised with a recommendation that there be a standardised way of doing this. This will be a challenge as the sector is so diverse. It will be interesting to see how this evolves.

## Trustee skills and training

- It is essential that charities regularly undertake skills audits of their trustee boards to ensure that they have the necessary capabilities to undertake their vital governance role. For large charities, this should be an annual occurrence.
- Training and development are essential for charity trustees in order for the sector to work.

## Board diversity and turnover

- We acknowledge that recruitment of trustees is challenging for many charities, especially when seeking trustees with particular skill sets. However, we believe that trustee diversity is important, as boards with a range of skills, experiences, ages and backgrounds are likely to lead to better governance.
- We recommend that the Office for Civil Society (OCS) works with other departments and business leaders to develop a new initiative to promote trusteeship to employees and employers, and thereby encourages greater participation and diversity. The initiative should encourage employees to see both the selfless, charitable value of trusteeship and the personal benefits in the form of skills and career development. Employers should be encouraged to give greater recognition to trustee roles in recruitment and progression of their staff.

## Executive leadership

- Charities recognise that training and development for leaders and staff is important, however there

are still significant shortcomings in terms of available training and levels of take-up. We therefore recommend that infrastructure bodies in the sector take the lead on working with government, academics and research institutions, and with the business community, to identify further opportunities to support and fund leadership programmes.

## Payment of trustees

- We believe that the voluntary principle of trusteeship is an important one and that trustees should not receive payment for undertaking the role.

## Transparency, accountability and impact the report concludes

- We believe that it is important for all but the very smallest charities to have a simple website or public social media page to provide that transparency. We recommend that public sector funders and other donors should evaluate the transparency of charities when considering requests for funding.
- We recommend that the Governance Code steering group sets out best practice suggestions for governance reporting by charities. This might involve charities including in their annual report a statement that they follow the Governance Code, or a similar specialist governance code relevant to their work, and report any actions they have taken over the year in light of the code.
- All charities should be seeking independent evaluation of their impact on their beneficiaries, in order to ensure that they are delivering for them and to demonstrate this to beneficiaries, funders and the public. The form of such evaluation may vary considerably, depending on the size of the charity and the type of work it is engaged in. We recommend that public sector commissioners assess such evaluation when awarding contracts.

- We welcome initiatives such as inspiring impact that seek to assist charities in demonstrating impact. We recommend that the government and the charity sector continue to pursue initiatives to better understand and promote the impact of charities.
- We recommend that the OCS develops guidance for the rest of the public sector on how to set contractual impact reporting requirements appropriately and in a standardised fashion in order to reduce the bureaucratic burden on charities. The OCS should promote its work beyond the public sector in order to maximise its reach and value.
- We endorse the suggestion in the Governance Code that charities should provide regular information to stakeholders that enable them to measure the charity's success in achieving its purposes.

## Impact on charities of the UK's departure from the European Union

- As part of its ongoing engagement with the charity sector in relation to the UK's withdrawal from the EU, the OCS should undertake an audit of the potential impact of Brexit on charities. This should include the impact of loss of funding as well as on research collaboration. We recommend that the OCS publish its assessment by the end of 2017.

The full report 'Stronger charities for a stronger society' is available from [www.parliament.uk](http://www.parliament.uk)

We have trained 93 trustees this year as part of our commitment to the sector. In addition there will be a session on the recruitment of trustees at our November charity conference.



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# “Playing your Reserves” guidance

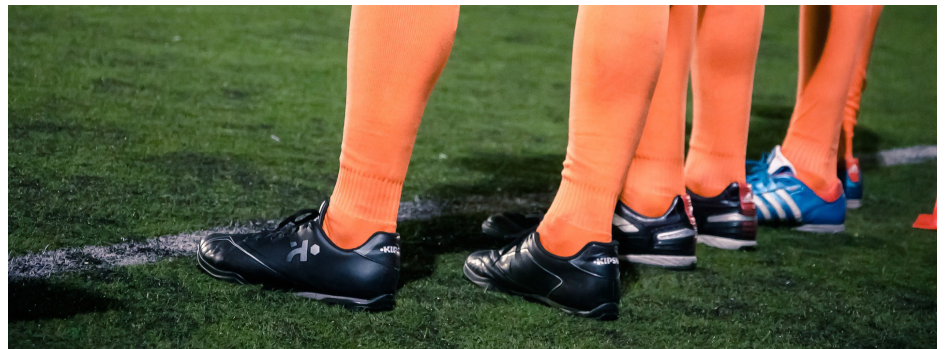
Mike Jackson looks at how charities should be planning for their future.

As another football season begins [and my team missed the play-offs last season yet again!] you may be forgiven for thinking that this article will discuss strategic use of reserves by football managers! You would be wrong!

I have had a number of discussions recently with clients as well as my own charity trustees on reserves held.

Too often trustees leave discussion around reserves policy to the “numbers people” on the Board. I have also heard trustees saying “the Charity Commission guidance is X months expenditure in reserves”. It therefore appears some charity trustees struggle with the importance of properly considering the appropriate level of reserves and have not heeded advice from the Charity Commission or their own auditors. Identifying the financial impact of risks and understanding why reserves are held is an important part of the planning and budgeting process to be understood by all trustees.

The Charity Commission issued guidance on charity reserves in their



booklet CC19: Charity Reserves: Building Resilience issued in 2016. More recently the Commission re-issued its booklet CC25: Charity Finances – the Essentials which gives a very readable explanation on reserves policy.

What a reserves policy should look like begins with assessing “free reserves” - unrestricted funds adjusted for amounts represented by fixed assets, programme related investments and designated funds as these funds cannot be easily re-employed to cover short term financial issues arising.

All charities should aim to apply as much funding as possible towards their

beneficiaries. However, a zero reserves policy can be very dangerous, there needs to be a balance. Trustees should take account of volatility of income, fixed operating costs and future plans when considering reserves. When planning the future for their charity, trustees need to be mindful not only of the current needs of beneficiaries but also making and keeping the charity financially resilient.



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## Trustees - what should you be asking?

Rachel Heath takes a look at updated guidance from the Charity Commission ‘Charity governance, finance and resilience: 15 questions trustees should ask’.

Many will be familiar with the guidance, however, in March 2017, it was updated and I would recommend that trustees take time to consider what it says.

The guidance which is very comprehensive, includes links to further information. It needs to be taken in context, relative to the size of your individual charity and the Charity Commission recommends the guidance is used as a checklist and regularly reviewed.

Below I have provided a simplified interpretation.

**Strategy: a plan of action designed to achieve a long-term overall aim**  
This is very wide ranging but in essence

the continued era of austerity impacts on charities’ income and potentially increased demand for services. Trustees should consider their charity’s activities and long-term survival in light of the economic climate.

### **Making the most of your finances**

Trustees should consider the adequacy and frequency of the financial information they receive and if such information indicates the need to change activities or costs. Particularly trustees need to consider the charity’s reserves policy and whether the levels meet the needs of the charity given the current climate.

### **Governance**

Trustees should review the skills mix

on the board and consider how they manage conflicts of interest to ensure effective decision making.

Trustees need to consider the controls in place for the safeguarding of charity assets from fraud.

Registers of interests and risks register are useful tools for the above.

### **Making best use of resources**

Trustees should objectively review the utilisation of staff, volunteers and property. This may identify opportunities including the potential to collaborate with other charities.



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## News in brief

In our new regular feature, Nicola Adams reviews the latest news from the Charity Commission.



### Cyberfraud

Including the attack on the National Health Service in May this year, over 200,000 organisations, in 150 countries have been affected by recent ransomware attacks. The vulnerabilities exploited by the hackers are the same for charities as they are for individuals, public or private sector organisations.

Charities could be at risk and the Charity Commission are urging organisations to be vigilant. They encourage all charities to follow protection advice recently issued by the City of London Police and National Cyber Security Centre (NCSC).

If you think your charity has fallen victim to cyber-attack, you should report it to Action Fraud by calling 0300 123 2040, or visiting [www.actionfraud.police.uk](http://www.actionfraud.police.uk). Charities are also advised to report suspected or known fraud incidents to the Commission by emailing [rsi@charitycommission.gsi.gov.uk](mailto:rsi@charitycommission.gsi.gov.uk)

Serious incident reporting helps the Commission to understand the risks facing the sector as a whole and to gauge the volume and impact of incidents within charities.

### Public benefit reporting

Charity Commission research published in April has found over half

of charity accounts still don't meet the requirements to tell the public how the charity is meeting its objectives.

The Commission found that 54% of charities did not meet the public benefit reporting requirement. Out of these charities, 13 failed the requirement as they did not describe the difference that their charity had made; 21 charities did not include the statement that they had complied with the public benefit requirements and 24 charities did not do either.

This means too many charities are missing out on an important opportunity to tell the public why their work matters and what difference they are making. It is important for donors and supporters to understand how charities will spend their money. Charities should not miss out on the opportunity to showcase their attitude to accountability and transparency.

The Trustees' Annual Report template produced by the Charity Commission gives good examples of how to report on public benefit (see link below).

[www.charitycorp.org/about-the-corp/example-trustees-annual-reports](http://www.charitycorp.org/about-the-corp/example-trustees-annual-reports)

## Save the date!

### Date announced for 2017 BHP Charity Conference

BHP is pleased to announce that it is holding its tenth Charity Conference on Tuesday 14 November 2017 at Doncaster Racecourse.

This year's highly relevant programme will provide an update on several important issues affecting charities with speakers from both BHP's specialist charity team and guest speakers from the sector.

The free full day conference is open to all charities and full details will be issued later in the year. If you would like more information at this stage, please contact Louise Bright. [Louise.bright@bhp.co.uk](mailto:Louise.bright@bhp.co.uk) or call 0114 266 7171.



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