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Editor's welcome

As we come to the end of 2017 it is time to look back at what has happened in the charity sector and what is on the horizon for 2018.

For me the attention on rebuilding public trust stands out as a highlight of the year, assisted by recommendations from the Lords Select Committee and the updating of the Charity Governance Code. When things go wrong its usually a charity's governance which is found wanting, this continues to be a key area for charity trustees to focus on as well as the need to report serious incidents to the Charity Commission under the new guidance.

The launch of the Fundraising Preference Service in the summer should give much needed relief to the public from the fundraising practices of some of the national charities.

For 2018 GDPR is looming and those charities that have not started to think about this need to act quickly as the regulations come into force on 25 May 2018. The result of the consultation on FRED 68 should finally resolve the accounting treatment of corporate gift aid donations although the outcome may be less than helpful!

My thanks go to the specialist charity team at BHP who have contributed articles to our newsletter this year to keep you up to date with developments in the sector. Hopefully this has helped you to make your charity more effective. We look forward to continuing to do so in 2018.



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Can running a charity be made easier?

The Law Commission has recently published a report 'Technical Issues in Charity Law' together with a new Draft Charities Bill. It is proposed that reforms will be made so that running a charity is easier and cheaper. New powers for the Charity Commission are also proposed. Tom Bell sets out the key proposed changes below.

Key recommendations

With the aim being to maximise the efficient use of charitable funds whilst ensuring that proper safeguards are in place, a number of the key recommendations for charities are as follows:

- allow "ex gratia" payments which charities have a moral obligation to pay, but not a legal obligation. The payments would be subject to limits that would be dependent on the income of the charity;
- clarify when property can be applied cy-près (as near as possible to the donor's wishes), including the proceeds of failed fundraising appeals;
- amend the legal framework for buying, selling, leasing and mortgaging charity land;
- clarify and expand the statutory regime that applies to permanent endowments;
- introduce a power for charities to borrow from their permanent endowment and to make

certain social investments using permanent endowment (proper safeguards would need to be in place).

- facilitate charity mergers and incorporations where they are appropriate.

Charity Commission powers

The report recommends that the powers of the Charity Commission are extended to:

- prevent charities from using misleading names;
- allow them to confirm if trustees were properly appointed;
- enable them to delay registering a charity (this is maybe one power that most of us would already expect the Commission to have).

It is sometimes necessary for charities to amend their governing document. The report sets out what are regulated amendments and those that are not. Where changes are proposed to a charity's primary purposes the report

recommends the introduction of a single set of criteria that must be met. This should make the process easier and also inform charities of the boxes that they need to tick to enable changes to be approved.

Summary

It is hoped that the changes will save charities a lot of time and money, in addition to providing certainty on a number of issues that cause concern.

The report has received positive responses from sector bodies and representatives but a Government response to the report is awaited, so watch this space!

The report is available at <https://www.lawcom.gov.uk/project/charity-law-technical-issues-in-charity-law/>



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Lords Select Committee report on charities

Jane Marshall takes a further look at some of the key highlights from the report published in March.

The continuing cuts to local authority funding is still having a major impact on funding for the sector. It's not surprising therefore that the report recommends a revitalised role for grants, although the suggestion that these come from local authorities seems misguided. Let's hope the Government listen to the recommendations in relation to the National Living Wage and VAT, which increases the cost base for many charities. The recommendation to invest in the training of volunteers is vital and an area which funders need to wake up to.

A revitalised role for grants

While acknowledging the increasing financial constraints that public sector bodies are under, we emphasise the important role that grant funding plays in ensuring the sustainability of charities, particularly with regard to innovation. There should be a wider understanding in the public sector of the use and potential of grant funding for charities and their beneficiaries, drawing on the practices of institutions such as the Big Lottery Fund.

We recognise the significantly reduced funding available to local authorities. Nevertheless, grant funding has great potential in sustaining a healthy civil society and in enabling communities to benefit from charities' capacity to innovate. We recommend that local authorities should bear this in mind in the course of their financial planning, and maintain or revive grants wherever possible.

Economic and tax policy

We welcome the Government's changes to Gift Aid as part of the Small Charitable Donations and Childcare Payments Act 2017. We recommend that the Office of Civil Society [OCS] works closely with Her Majesty's Revenue & Customs [HMRC] to examine whether there are further changes that would help charities maximise the value of Gift Aid and minimise bureaucracy.

We recommend that the OCS works with HMRC to ensure that the needs of charities are high on the agenda in



relation to future changes to VAT and the National Living Wage.

We recommend that the OCS works to significantly improve the awareness and availability of payroll giving by companies. In addition, there is no excuse for any government department not offering payroll giving to their employees. The Government must set an example in this regard by ensuring that payroll giving is offered to staff as standard by all departments and executive agencies.

Role of volunteers

Harnessing and maximising the efforts of volunteers is central to the principle and the practice of many charities, and comes with a cost. Volunteers may need managing, supporting and training. Investing in volunteers, where possible, is a way of respecting their contribution as well as increasing their value to the charity.

Funders need to be more receptive to requests for resources for volunteer managers and coordinators, especially where charities are able to demonstrate a strong potential volunteer base. We recommend that government guidance on public sector grants and contracts is amended to reflect this and set a standard for other funders.

There is scope for further efforts by the Government to allow people to incorporate volunteering into their lives. We recommend that, in line with our earlier recommendation on trusteeship, the OCS should work with other departments, the public sector

and businesses to encourage greater flexibility for employees to take time off for charitable work.

We welcome the minister's review of full-time volunteering by young people. This should be encouraged, by government, by infrastructure bodies and by employers, with the caveat that volunteering should be a springboard to, not a substitute for, paid employment.

Charities and digital technology

Charities should actively consider including a digital trustee role on their boards. We note the potential benefits to board diversity that would be likely to result from adopting such an approach.

We recommend that infrastructure bodies share knowledge and best practice on innovation and digitisation across the sector and coordinate training opportunities, at minimal cost, for charities with limited digital experience. We recommend that the Big Lottery Fund provides support to enable this.

The full report 'Stronger charities for a stronger society' is available from www.parliament.uk



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Retail Gift Aid - a common problem?

Rachelle Rowbottom provides an insight into the commercial challenges of operating the scheme.

As the Retail Gift Aid scheme is becoming more popular amongst charities and donors, the nature of the transaction needs to be considered to ensure that charity shops are run on a commercial and sustainable basis.

In some areas of the country, footfall on the high street has fallen and the income generated by charity shops has been hit. Added to this, are increasing costs of operating the shops including those in relation to staff and premises.

Over the last few months we have seen further issues where charities run their shops through trading subsidiaries. The amount donated under the Retail Gift Aid scheme, which previously would have been sales income from donated goods in the subsidiary, is now the income of the parent charity. It is the commission charged to the donor by the shop for acting as their agent in selling the goods that is income of the trading subsidiary, which is a much reduced amount.

Although it has been a while since HMRC updated their guidance regarding the method for establishing the level of commission charged on Retail Gift Aid arrangements, a number of charities still seem to be making a 1% charge.

The commission charge, together with allocation of costs between the charity and subsidiary needs some careful thought so that the business model stacks up.

Museum and galleries tax relief

Rachelle Rowbottom provides an update regarding the introduction of the relief.

Although excluded from the first Finance Act of the year, the museum and galleries tax relief is included in the September 2017 Finance Bill.

This is the latest creative industry relief and it follows the same format as previous ones. It is specifically aimed at the charity sector, although it can be claimed by a trading subsidiary of a charity or local authority.

Eligible museums and galleries will be able to claim tax relief for qualifying expenditure, incurred from 1 April 2017 onwards, on new exhibitions. Where the relief results in a loss that can be surrendered, HMRC will pay the museum/gallery a tax credit. The tax credit is calculated at rates of 20% for non-touring and 25% for touring exhibitions. There are detailed criteria



to fulfill in terms of the exhibition, the producer of the exhibition and qualifying costs.



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BHP's CSR efforts

As we come to the end of 2017, it is a good time to look back on what the staff at BHP and our CSR team have achieved together over the last twelve months.

As a Firm we made the decision in 2015 to change our approach to fundraising after consulting with our staff. Instead of appointing a 'Charity of the Year'; we recognise that our staff all have personal reasons for supporting their favourite charities. This has allowed BHP to support those charities which our staff care passionately about and this has proved successful - in 2016 we raised over **£23,000**.

This year so far, staff at BHP have raised over **£17,000** for various local charities with events such as dress down days, bake sales, the Mistress Cutler's Challenge and bike rides as well as volunteering their time. We are really proud of their achievements over the year, and we still have a couple of months to go!



News in brief

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

Consultation on the 2018 Annual Return

All registered charities in England and Wales with an income threshold of over £10,000 must complete an Annual Return. This tool enables the Charity Commission to maintain an accurate register of charities, understand the sector and regulate it more effectively.

The Charity Commission has opened a consultation on proposed changes to the 2018 Annual Return as part of its two year project into how it collects and reviews key information from charities. The overall intention is to shift to a more dynamic return which is easier to use.

It is proposed smaller charities with simpler operating structures will be required to answer less questions, whereas larger more complex charities will be required to answer more questions, making the return better targeted.

The Commission is considering adding questions on:

Fundraising

Does the charity work with a commercial participator or professional fundraiser and if so, do they have a signed contract with them?

Government funding

To expand the current questions to ask about the number of grants or contracts in place and the total value of these.

Income from overseas

If overseas income has been received, you will be required to indicate the relevant countries, how much was received from each country and the type of income.

Operating and spending overseas

In addition to the current questions relating to spending per country it is suggested that a further question be added to identify what method was used to transfer the money.

Salaries

It is proposed to ask whether any staff member was paid over £60,000 and then to enter the number in each bank of £10,000 increments over this level. It is also proposed to specifically ask for the CEO's salary.

Safeguarding

All charities which have indicated that they work with children/young people, elderly/old people or people with disabilities, but are not subject to regulation by another regulator, would be asked whether trustees/staff/volunteers work directly with vulnerable beneficiaries and on the basis of a 'yes' answer would be asked whether DBS checks have been carried out on those individuals.

The Charity Commission is keen to hear from charities that complete the Annual Return, as well as users of the online register who have an interest in the information published. Consultation responses should be made via an online survey before 5pm on Friday 24 November 2017.

This is yet another example of increased information requirements of the sector and some of the suggested additional questions could be onerous and require more information than is actually in the accounts. I would encourage you to have your say by taking part in the consultation.

New guidance on serious incident reporting

The Charity Commission says there is significant under-reporting of problems by charities, which is putting charities at potential risk of further harm, including reputational damage.

A serious incident in a charity is described as an "adverse event, actual or alleged, which results in harm to a charity's work, beneficiaries or reputation; the loss of a charity's money or assets, or damage to a charity's property".

Reporting a serious incident to the regulator helps the trustees demonstrate that they are taking appropriate action to deal with it and can limit reputational and actual harm to the charity. It also allows the Commission, if asked, to state that the trustees handled the situation responsibly.

The new guidance on reporting serious incidents is to help charities report appropriate matters as soon as possible after they occur.

The new guidance:

- includes new tools to make it clearer to trustees what they should, and should not, report to the regulator. These tools include checklists and examples;
- provides greater clarity on incidents resulting in 'significant financial loss' including that losing significant funding or contracts which cannot be replaced should be reported to the regulator;
- no longer requires trustees to report if their charity does not have a safeguarding policy in place. This information will continue to be collected through the annual return.

Since 2011 serious incident reporting has been increasing steadily but the Commission continues to find, through its casework, events and problems which should have been reported to the regulator at an earlier date.

Last year, over half of serious incidents reported related to safeguarding, around one in seven related to money laundering or fraud with a third of these being internal fraud.

Reporting incidents to the Commission helps them gauge the volume and impact of these incidents within charities and to understand the risks facing the sector as a whole. Guidance and alerts can then be issued to the wider sector.

The revised guidance can be found at <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>



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