

Spring 2015

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CHARITY BRIEFING

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LETTER FROM THE EDITOR



Welcome to the spring edition of Charity Briefing.

There have been a series of updates from the Charity Commission since our last edition, and we include articles on two of their reviews. The first into the quality of charity annual

reports and the second on enhancements to this year's annual return form, which now asks several additional questions that will be public information on the Commission webpage in your charities name.

There has been a fast tracking of a key threshold for charity reporting. In March, approval was reached for the increase in mandatory audit thresholds for charities, which will see many more charities fall outside of audit territory. This may be seen both as a removal or red tape, but it also has potential pitfalls. The article examines a number of these in more detail.

We are pleased to include a guest article by Adam Hartrick, Partner at Hempsons Solicitors, on the new Duty of Candour which will be relevant to all organisations that are regulated by CQC. The new regulations are now in force, and trustee boards and managers within the care sector should be aware of the new rules and how they will impact on their operations.

Finally, as a result of an EU Directive on energy efficiency, a new statutory requirement to carry out energy efficiency audits is now in place. We are pleased to include an article from Neil Guthrie, who is involved in the administration of ESOS, to explain the requirements in more detail.

We hope you enjoy reading this edition of Charity Briefing and if you have any queries on any of the points raised in these articles, please do not hesitate to contact me.

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Governance and Financial Reporting

COMMISSION RELEASE REPORT ON THE QUALITY OF CHARITY ACCOUNTS

In March 2015, the Charity Commission published a review on the quality of filed charity accounts. They selected 215 charities of various sizes split between reporting periods 31 March 2012 and 2013. Their results were based on their own 'acceptable quality' criteria rather than strict compliance with the charity SORP. Of their sample, they found that the 'acceptability' criteria were met by 54% of charities for the reporting period 2011/12, increasing to 68% for 2012/13. This in itself was encouraging, showing an improvement between periods. However, further analysis shows that only 70% of those sampled had a statement of both their purposes and their activities to carry out those purposes and only 69% included a reserves policy.

They also found that only 38% of accounts explained levels of unacceptably low charitable expenditure, only 61% explained deemed insolvency issues and 70% explained significant loans to or made by the charity.

Given the recent increase in audit thresholds, it was of specific interest that 89% of those sampled, which were above the audit threshold, had accounts of an acceptable quality. Only 65% passed the test where the accounts were between £250-500,000 of income, reducing to 53% for those charities below £250,000 of income.

With the vast majority of charities falling into these later classifications it must be a concern that the quality of charity accounts decreases when they are not subject to statutory audit.

Time will tell whether the increases in disclosures in the new charity SORP will encourage better quality in charity reporting and if the removal of the need to be audited will result in an increase in non-compliance.

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ANNUAL RETURN FORM 2014

The Charity Commission has updated the Annual Return form for 2014, which is now available on their website, along with guidance to help those filling in the form. The return must be completed by all registered charities with an income of over £10,000 within 10 months of the financial year end.

There are seven new areas that charities will be required to complete. The new question areas include:

1. Whether the charity pays trustees
2. Whether the charity raises funds from the public
3. Whether the charity has a trading subsidiary
4. Whether the charity has written policies for risk management, investments, safeguarding vulnerable beneficiaries, conflicts of interest, complaints handling and volunteer management
5. Whether the charity is regulated or registered with other regulators than the Charity Commission
6. How the charity awards grants
7. The seventh question allows the charity to give more information about its achievements

In addition to these questions, the Annual Return will require charities to confirm whether or not they have reviewed their internal controls during the reporting period.

We would recommend an agenda item be scheduled for at least one meeting a year to carry out such a review.

The Summary Information Return, which charities with income in excess of £1million were required to complete, in addition to the annual return, has been discontinued.

A key change to note is that the responses to certain questions contained within the return will now be added to your web page on the Commission website.

Greater scrutiny of the Annual return form is recommended.

The Commission will publish information that they already hold about charities. This includes:

- whether the charity is insolvent;
- whether the charity is in administration; or
- whether the charity is subject to enforcement action for non-submission of accounts.

Finally, the Charity Commission will also publish information about whether a charity is a member of the Fundraising Standards Board (FRSB). This information will be collected directly from the FRSB.

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CHARITY COMMISSION CASES AND INQUIRIES

The role of the Charity Commission over the years has changed dramatically, no doubt as a result of significant funding cuts. Their revised strategy has led to an increase in the number of reviews that it is carrying out on charities. This year alone they have so far issued two regulatory decisions, four inquiry reports and six case reports.

When you look back over the past year, there is a familiar ring to many of the case reports and inquiries that the Commission has undertaken and reported on. The two key areas that consistently emerge relate to:

1. Conflicts of interests of trustees in the operations or decisions of charities.
2. A lack of financial probity/robust questioning of financial information.

In response to the first of these points, the Commission reissued its guidance on conflicts of interest during 2014, cc26. It is advisable for all new trustees, and perhaps once a year for trustees, to be reminded of what constitutes a conflict of interest. It is now best practice to include conflicts of interest as a standing agenda item on all board and sub-committee agendas.

The second point is perhaps more concerning. With the increase in the audit threshold, the lower level of scrutiny provided by independent examinations, the increased complexity of charity accounting compared to corporate accounting and the inevitable limited resources in smaller charities to have full time, or even access to, knowledgeable charity finance personnel, there is a clear call to trustees to ensure that they have sufficient finance experience on their board or sufficient understanding of the charities financial position. This will ensure adequate safeguarding of the charity and effective challenge and probing of the management accounts throughout the year.

Charities should make use of key umbrella organisations to assist them, in particular Charity Finance Group, NCVO and ACEVO would be good starting points, as well as Civil Society. Also ensure that you are on the mailing lists for both charity accountants and lawyers to keep you up to date with sector issues that may affect your charity and the way it is regulated and managed.

If you wish to discuss your own charity's circumstances, or management exporting formats please do contact us.

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DUTY OF CANDOUR FOR SOCIAL CARE PROVIDERS

A significant new legal requirement came into force on 1 April 2015 for all providers, including charities, that provide regulated activities to service users. In practice, this will apply to all social care providers who are registered with the Care Quality Commission for the provision of regulated activities.

The new requirement is the duty of candour, which came into force in relation to NHS providers at the end of November 2014. From 1 April 2015 it will apply to all providers registered with the Care Quality Commission, but it is important to note that the Regulation in relation to non-NHS bodies is different in some material respects.

All providers of regulated activities must, by requirement of statute, act in an open and transparent way in relation to care provided to service users. As soon as reasonably practicable after becoming aware that a "notifiable safety incident" has occurred, a provider must notify the relevant person and provide reasonable support to him or her in relation to the incident. A notifiable safety incident is one which, in the reasonable opinion of a healthcare professional, appears to have resulted in:

- The death of the service user, where the death relates directly to the incident rather than to the natural course of the service user's illness or underlying condition.
- An impairment of the sensory, motor or intellectual functions of the service user which has lasted, or is likely to last, for a continuous period of 28 days.
- Changes to the structure of the service user's body - pressure sores, or loss of limb perhaps.

- Prolonged pain or prolonged psychological harm.
- Shortening of life expectancy.
- The need for treatment by a healthcare professional in order to prevent the death of the service user, or any injury to the service user which, if left untreated, would lead to one or more of the outcomes noted above.

Notification must comply with specific requirements - it needs to be given in person, provide a true account as to the facts known to the provider about the incident, advise what enquiries into the incident are considered appropriate, apologise and keep a written record of all of these matters.

It is important to note that it is a criminal offence to fail to comply with the notification requirements and on conviction, a provider would be liable to a potential fine of £2,500 - together with the significant collateral damage to reputation if prosecuted.

In order to achieve compliance, it is important that all providers engage with the requirements of the new duty. It is vital that all notifiable safety incidents are captured and the requirements of the duty are followed. In practical terms:

- Staff must understand the new duty. They will need training, so as to understand their own obligations and the roles of those around them in relation to the duty.
- This needs to be led from the top - from the Board of Trustees or Directors: the focus of the Board should be on ensuring that systems are in place to deliver compliance including audits of incidents and compliance with the duty.
- Staff need to understand how to identify when the harm threshold has been reached.
- Have a clear organisational reporting requirement understood by all.
- Staff need to be trained as to how to communicate with services users and their representatives once the duty has arisen and how to apologise – expressing sorrow or regret, not admitting fault.
- Investigation processes and procedures need to be robust so as to ensure that the full facts are revealed and communicated.

Hempsons has been working with providers in relation to the new duty. Compliance will form a key part of any CQC inspection and it is essential that all providers take steps to ensure their staff are trained and that they implement processes that will achieve compliance.

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SAVING ENERGY AND ESOS - WHAT DOES IT MEAN TO YOU?

IS ENERGY SAVING HIGH UP YOUR AGENDA?

The Government wants it to be. It has been encouraging energy savings and carbon reduction through a number of schemes over the past years, mainly aimed at high energy users. Now it has introduced a new scheme, the Energy Savings Opportunity Scheme (ESOS), which aims to encourage larger organisations to save energy and money. It does this by requiring organisations to undertake regular assessments which identify cost-effective energy saving measures for supplies to buildings, industrial processes and transport. ESOS was introduced by Government in 2014 and requires all qualifying organisations to carry out energy audits and identify their energy savings opportunities by 5th December 2015.

ARE CHARITIES INVOLVED IN THIS?

The answer is yes if you meet the qualifying criteria. You qualify if you have at least one large undertaking in your group. You will need to look at all the undertakings that are part of your group including any trading arms you may have.

An undertaking is a body corporate or partnership, or an unincorporated association carrying on a trade or business, with or without a view to profit.

Any organisation that had at least one large undertaking in its group on the 31 December 2014 is required to participate.

A large undertaking is one that either:

- employs more than 250 people; or
- has an annual turnover above €50 million (£38,937,777) and an annual balance sheet total above €43 million (£33,486,489).

When assessing how many employees an undertaking has, you need to include all employees even if they are only working part time or on zero hours contracts. You will also need to include any employees working abroad who are directly employed by the UK undertaking. For many charities, this is likely to include a large number of part time staff but not volunteers who do not have employment contracts.

If you qualify, there are a number of things you will need to do by December 5 this year.

1. Assess all of your energy use and identify at least 90% of this for further audit.
2. Audit and provide energy use profiles for the 90% of energy use identified.
3. Identify practicable and cost effective energy savings opportunities.
4. Get you audits and energy savings opportunities signed off by an approved auditor.
5. Inform the Environment Agency that this has been completed via the notification system by 5th December 2015.

Further details and guidance for ESOS are available at: <https://www.gov.uk/energy-savings-opportunity-scheme-esos>

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IS THE NEW CHARITY SORP SET TO BE AMENDED EVEN BEFORE ITS IMPLEMENTATION?

On 19 February 2015, the Financial Reporting Council published FRED 59 which includes draft amendments to FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland relating to small entities.

Implementation of FRED 59 will see the withdrawal of the Financial Reporting Standard for Smaller Entities ("FRSSE") for accounting periods beginning on or after 1 January 2016. All companies, other than micro-entities, will therefore be required to adopt the recognition and measurement requirements of FRS 102 from that date, with early adoption likely to be permitted. FRED 59 includes a number of disclosure exemptions for small entities (all entities which fulfil the small company size criteria even if they are not companies), of which the two most significant are exemption from the requirement to include a Statement of Cash Flows and exemption from the requirement to disclose the aggregate remuneration of key management personnel.

Along with these changes, the Department of Business, Innovation & Skill (BIS) has indicated that it intends

to introduce regulations early in 2015 which will make significant changes to the companies reporting regime. Three of these changes are relevant to charities:

- Increasing the small company size criteria to the maximum allowed in the Directive (£10.2million turnover; £5.1million gross assets; 50 employees).
- Allowing companies to use alternative layouts for their primary statements.
- Requiring goodwill to be written off over no more than 10 years in the "exceptional circumstances" where its useful economic life cannot be reliably estimated.

The withdrawal of the FRSSE will require the withdrawal of the new Charities SORP (FRSSE). More significant, however, are the exemptions that will be incorporated into FRED 59. The new FRS 102 SORP specifically requires the production of a Cash flow statement and the disclosure of aggregate remuneration of key management personnel. Given the prominence of these two disclosures within the SORP, we would expect there to be a follow up/release from the

Charity Commission providing for these exemptions to apply and, until we receive it, all charities should assume that these exemptions will not apply to charitable companies that are required to follow the SORP. Yet again, we see enhanced disclosures for the charity sector over and above those required for corporate entities in the name of transparency.

It is important to note that "small charities" in the context of FRED 59 is not the same as "smaller charities" in the context of the SORP – the latter term denoting charities which are below the threshold for statutory audit (see next article).

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CHANGES TO THE AUDIT THRESHOLD FOR CHARITIES

Also published on 19 February 2015, was the Cabinet Office's response to its consultation on the statutory audit thresholds for charities. The conclusion reached, following the consultation, is that the income threshold for audit will increase from £500,000 to £1million but both the asset component and the income component of the asset threshold will remain unchanged at £3.26million and £250,000 respectively. The threshold for preparing accruals accounts will remain unchanged at £250,000. Charities that choose to take advantage of the audit exemption will still require an Independent Examination, which, for charities with income above £250,000, will still need to be conducted by a suitably qualified professional.

These changes have been approved by Statutory Instrument and are effective for accounting periods ending on or after 31 March 2015.

The Cabinet Office publication is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405587/Government_Response_charity_audit_and_independent_examination.pdf

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THREE KEY UPDATES FROM THE 2015 BUDGET

1

VAT REFUNDS FOR HOSPICES AND OTHER PALLIATIVE CARE CHARITIES.

In last December's Autumn Statement, the Chancellor announced that he was considering ways to assist hospices.

A refund scheme, similar to that for Academies and National Museums is to be introduced from 1 April 2015.

The scheme will allow palliative care charities to reclaim VAT incurred in carrying out non-business activities, such as the provision of care, when it is funded by voluntary income or public funding.

2

MEDICAL COURIER CHARITIES

A similar refund scheme is being introduced for medical courier charities, such as "blood bikes" whose main purpose is to provide a free service to the NHS, transporting items such as blood platelets, samples for analysis, drugs etc.

Where such activities are funded by donations or public funding, they are regarded as non-business activities, and charities have been unable to reclaim VAT.

The refund scheme will take effect from 1 April 2015.

3

GIFT AID SMALL DONATIONS SCHEME (GASDS)

The maximum amount of donations qualifying for the GASDS will increase from £5,000 to £8,000 from April 2016. A maximum of £2,000 income tax will be claimable under Gift Aid "top up" on small donations.

GIFT AID DIGITAL

Intermediaries are to be given a greater role, in administering Gift Aid, with a view to increasing the take up of online and text donations. It is intended that donors will be required to make one declaration to the intermediary, rather than a separate declaration for each donation. The effective date for this change has yet to be announced.

For further details on any of these topics, please see our [Budget Summary](#) on the publications page of our website.

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Future events

Civil Society Trustee Exchange*	21 April 2015
P11Ds: Reporting Expenses and Benefits (Webinar)	27 April 2015
Trustee Training Masterclass - Charity fundraising and raising of finance	5 May 2015
Trustee Training Masterclass - Owning, managing and occupying property assets	12 May 2015
CFG Annual Conference*	13 May 2015
What every trustee should know - Refresher	19 May 2015
haysmacintyre VAT Exchange	24 Spetember
Network of Women Chairs	Multiple dates available on our website

*haysmacintyre will be speaking and exhibiting at these events

For further information on these events please visit www.haysmacintyre.com/events or contact Charlotte Gibbons on 020 7969 5521, cgibbons@haysmacintyre.com

Should you wish to receive an electronic version of our briefing in the future, please email Charlotte Gibbons on cgibbons@haysmacintyre.com

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