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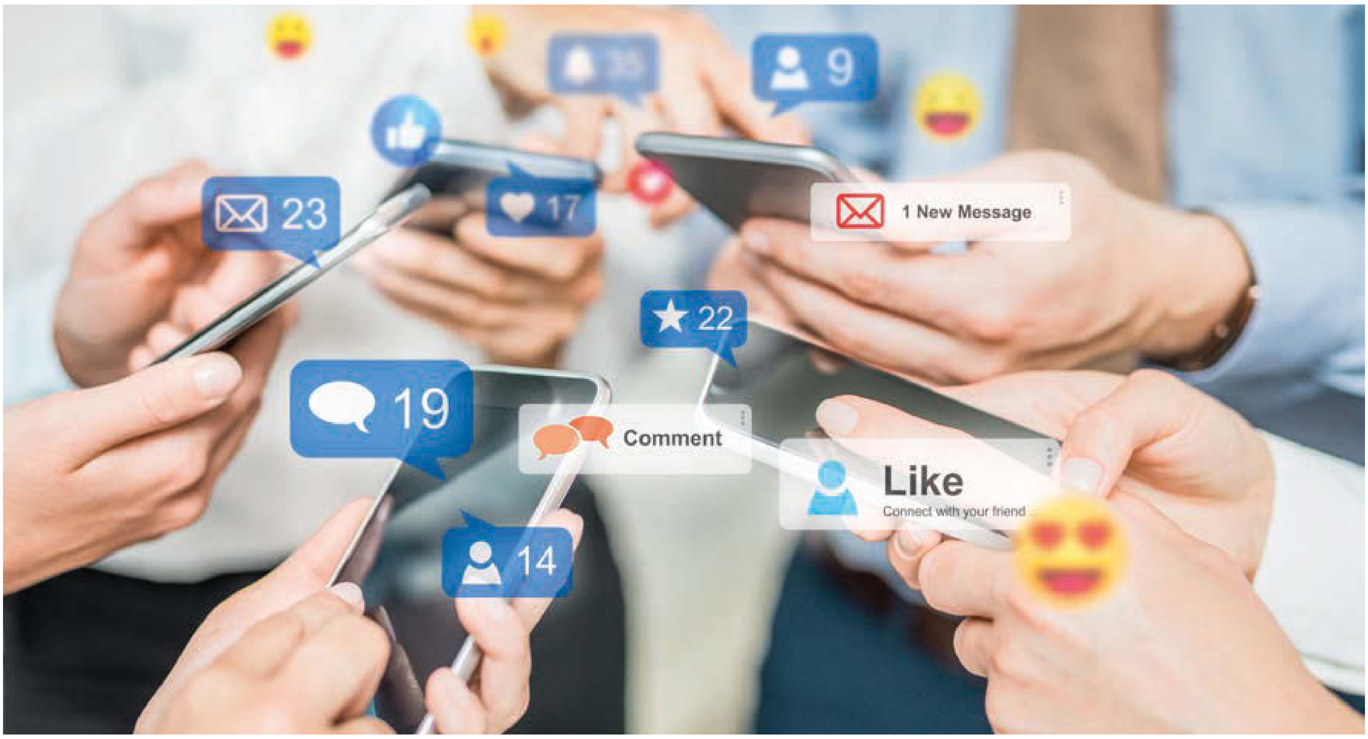
CHARITY NEWS

AUTUMN 2023



Our Charity News includes the latest guidance and support available for the not-for-profit sector, with a range of new guidance being published by the charity regulators. We also consider the impact of recent legislative, reporting and tax developments and other pertinent issues, giving you the inside track on the sector's current hot topics and latest guidance.

The newsletter is applicable to the whole of the United Kingdom and makes reference to the three UK charity regulators:

- the Charity Commission for Northern Ireland (CCNI)
- the Office of the Scottish Charity Regulator (OSCR) and
- the Charity Commission for England and Wales (CCEW).

All the articles may be of interest; however, to aid you we have included the following key:

Key

United Kingdom

England

Wales

Scotland

Northern Ireland

Hot topics

Charity use of social media

Social media is rarely out of the news these days, often with adverse consequences for those that have misused it or failed to take proper precautions over its use. The charity sector has not been immune to this, with the RSPB being the centre of a political row after a tweet it published accused Government ministers of being liars, for which the RSPB chief executive had to subsequently apologise for.

It is timely therefore that CCEW has recently published guidance on the use of social media by charities. They acknowledge that there are many benefits to be gained from using social media, from raising awareness when campaigning, fundraising or advertising for employees and volunteers. The guidance makes clear that charities are entitled to campaign online in support of their objectives and beneficiaries, and shouldn't be afraid to engage in activity in sensitive areas such as immigration, even though it risks triggering controversy. The guidance does not change the position that a charity cannot support or oppose a particular political party, but it does make clear that the law permits charities to undertake political activity in support of their charitable aims.

The CCEW has identified that there is a knowledge gap, and that charities and trustees are not always aware of the risks that may arise from using social media. The guidance aims to fill that gap to help trustees understand those risks and how their legal duties apply.

The key messages from the guidance are:

- Although trustees may not be involved in the day-to-day running of their charity's social media, they must understand their legal responsibilities when delegating tasks.
- Charities should have in place a social media policy that sets out how the use of social media will further the charity's purpose, and include guidelines for those that use social media on the charity's behalf. The guidance has a checklist that can help in formulating that policy.
- Guidelines should also be put in place to manage the risk that content posted by individuals connected to the charity in their personal capacity may have a negative impact on the charity by association, although it is acknowledged that individuals have a right to exercise their freedom of expression within the law.

The guidance also includes details of organisations and resources that can help charities and trustees to improve their social media skills.

Guidance: https://bit.ly/3PS2UHt

The state of the charity sector

Over the course of the summer a number of reports have been issued providing an indication of the state of the charity sector in 2023 after the difficulties of the last few years caused by the pandemic and subsequent cost of living crisis.

In July CCEW published two reports based on research carried out earlier this year. The first addressed public trust in charities, and concluded that this had marginally increased at a time when other institutions have not fared so well. This stability is to be welcomed, but levels of trust still remain well below the levels seen before 2015 when a number of scandals rocked the public's perception of the sector. It is notable that trust levels are highest with smaller, local, volunteer-run charities than for many of the larger household names, often as those smaller charities are easier to identify with and can demonstrate a clearer link between donations and impact. It is clear that a charity that demonstrates transparency, whose work is more readily understood and supported, is one that is more likely to be trusted. Based on this research key issues for the sector for charities to consider include the need to manage funds responsibly, avoid unnecessary risks and to demonstrate how they make a difference.

CCEW's second report was based on research carried out with trustees and showed that most are of the opinion that they understand public expectations around finances, impact and values. There is work to be done though by smaller charities in promoting greater inclusivity at board level, with recruitment and retention policies needing to adapt and reflect modern expectations as to how charities should be governed.

Both the public and trustees had broadly similar views on the role of CCEW and the need to balance providing support for the sector and dealing with wrongdoing.

In the same month NCVO published a report entitled Time Well Spent, looking at what volunteer participation and experience currently looks like. It noted a fall in formal volunteer participation in recent years including in connection with fundraising activities, something the pandemic is likely to be the cause of. It was noted though that there was a growing trend in volunteering remotely.

For charities seeking to recruit more volunteers knowing what motivates them will be beneficial, with the need to feel that they are making a difference noted as the most important aspect of volunteering, followed closely by not being made to feel pressured to give time. The report goes on to provide a wealth of data on volunteer experience and impact, barriers to volunteering and retention issues that may provide insights for charities on how to best manage their volunteers on which many charities rely.

Details: https://bit.ly/45Vge3f

https://bit.ly/48qfV25

Investment policy

CCEW has issued revised guidance on Investments following a recent consultation, bringing it up to date for the modern era and ensuring that it reflects recent legal developments such as the recent High Court judgement in the Butler-Sloss case. This guidance is set out in CC14 **Investing charity money: guidance for trustees.**

The key theme of the guidance is the need for trustees to adopt a responsible investment strategy, acknowledging that trustees have discretion to choose what is best in their circumstances and that they have a range of investment options available. Maximising investment return remains something for trustees to aim for, but not at the expense of compromising the charity's purposes as ultimately the need to further those purposes should underpin all of the charity's decision making.

To assist trustees the guidance provides examples of issues for trustees to consider when setting an investment policy, such as the potential for an investment to conflict with the purposes of the charity, or the reputational risk of an investment decision. In doing so it warns trustees from allowing personal motives, opinions or interests to affect the decisions they make. The guidance also makes clear what actions trustees must take in order to be compliant with the law, such as when independent advice should be taken, and what is recommended best practice.

The updated guidance also includes advice on the use of social investments that are used to achieve the charity's purposes directly through the investment as well as making a financial return, and the different considerations that would apply.

Trustees of charities that make investments of any kind should familiarise themselves with this updated guidance and ensure that through its use they are able to justify that the investment decisions they make are in their charity's best interests.

Guidance: https://bit.ly/3ZuUEQC

Charity law reform - England & Wales

In our last edition we reported on the reforms set out in the Charities Act 2022 that were due to take effect in the Spring. At the time there was a delay in introducing the changes and we were unable to confirm the date that they took effect from, but we can now confirm that it was 14 June 2023. CCEW has now ensured that its guidance material has been updated for these legislative changes, which covered the following areas:

- Selling, leasing or otherwise disposing of land
- Using permanent endowment
- Charity names

It is anticipated that the following principal changes will come into effect for charities located in England and Wales before the end of 2023:

Charity constitutions

Reforms are being introduced to harmonise the rules on making changes to a charity's governing documents, which currently differ depending on whether a charity is unincorporated, a CIO or a limited company.

Charity trustees

CCEW will have new powers to order a charity to pay charity trustees for work they have performed if it would be unfair for them not to be paid, avoiding the current need for a charity to go to Court to authorise these payments or benefits.

CCEW will also be able to ratify the appointment of a charity trustee where it is unclear whether they were properly appointed in the first place.

Charity mergers

Reforms will be implemented that address some technical issues that can arise when dealing with legacies to a charity that has merged with another institution where details of the merger have been entered in CCEW's Register of Mergers.

This will only then leave the reform of ex gratia payments that was included in the 2022 Act which remain under consideration with no date yet announced of what they are expected to come into effect.

Guidance: https://bit.ly/3BTKIoB

Charity law reform - Scotland

In the last edition of Charity News we reported on planned reform of charity law in Scotland. On 9 August 2023 the Charities (Regulation and Administration)(Scotland) Act 2023 became law. The new law aims to promote greater transparency and accountability of charities and their trustees, and will introduce some changes that will bring Scotland into line with charity regulation already seen elsewhere in the UK.

The principal changes being introduced by this legislation are as follows:

Scottish Charity Register

The amount of information published on the publicly accessible register will be expanded. For the first time the names of a charity's trustees will be shown, although in special circumstances such as where there is a risk to personal safety charities can request that this information is not published. An internal database of charity trustees will also be maintained that will include trustee contact details.

The register will also be expanded to include copies of the annual accounts for all charities, which will not be redacted.

Separately OSCR will publish a list of trustees whom the Courts have removed and barred from acting as trustees in the future, and a register of charities who have merged will be maintained that will assist with the transfer of legacies.

OSCR's powers

OSCR's inquiry powers will be extended, allowing them to investigate former charities and former charity trustees. The Act also includes measures that should streamline the inquiry process. OSCR will also have the 'power of positive direction', meaning that in specific circumstances they will be able to direct charity trustees to take specific action.

If charities fail to submit their accounts, or if they do not engage with the regulator, then OSCR will have the power to remove them from the Scottish Charity Register.

Charitable status will be dependent upon maintaining a connection to Scotland. Applicants to the Register may be denied charitable status by OSCR if they cannot demonstrate such a connection, and existing charities could be removed from the Register on the same basis. These powers are not intended to affect genuine cross-border charities.

Trustees

The range of offences and circumstances that result in automatic disqualification of charity trustees are being extended, to include offences such as being convicted under bribery or proceeds of crime legislation, association with terrorist groups and sexual offences, and will also apply to those in senior management positions within a charity.

OSCR will be able to appoint interim trustees in specific circumstances.

Further guidance on these reforms will be published by OSCR in due course, including the timetable for their implementation.

Details: http://bit.ly/3m5KZkn

Annual return changes

OSCR has proposed several changes to the Annual Return required from Scottish Charities, with a consultation period on the changes which ran to 6 October 2023.

These proposals will require additional information to be provided, including a description of the activities undertaken by the charity and the number of trustees, staff and volunteers.

There will also be more questions on the governance of the charity that OSCR hope to be able to use in better providing guidance to trustees in helping them to meet their legal duties and ensure that the charity is being well run. It will also help OSCR to identify situations where regulatory action may be needed.

Details: https://bit.ly/3ZthZ5o

Internal controls

Having an effective system of internal control is a key way in which charities can protect themselves against risks that may arise and safeguard their resources. With the passage of time new risks will emerge and those systems will need to respond and adapt. To help charities with this process CCEW has updated its guidance in CC8 **internal controls for charities.**

The updated guidance is more concise and clearer than before, and covers issues that were not covered and covers issues that were not covered in the previous version, such as those arising from newer technology such as the use of cryptoassets and mobile payment systems such as Google Pay and Apple Pay. Specific risks arising from the use of cryptoassets referenced in the guidance includes vulnerability to theft by hackers, volatility in the value of crypto currency, difficulty in tracing donors and a lack of regulatory protection. This update is particularly timely given that earlier this year the Department for Science, Innovation and Technology published research that showed that 24% of charities had experienced a cyber attack in the previous 12 months.

It's not just risks resulting from technology that have been updated in the guidance, with more traditional areas such as holding public collections, making payments to related parties and operating overseas also being revised, and a new section on accepting hospitality has been added to the guidance.

Accompanying the guidance is an updated checklist for charities to use when checking whether their internal controls align with CCEW's guidance, something charities should be checking at least annually.

Details: https://bit.ly/3LC8c79

Fundraising best practice

A common concern about the charity sector is that too little of the funds raised get spent on performing charitable activities. This issue was recently considered by CCEW when carrying out an inquiry into Hospice Aid UK which had a costly direct mailing agreement with a third-party agency, and discovered that substantial funds being generated were being almost entirely consumed by the direct costs and fees of running the activity, leaving only 6% of the sums raised available for spending on the charitable activity.

This case attracted the attention of the Fundraising Regulator, and in response has published five best practice considerations when working with external agencies.

- Act in your charity's best interests, taking reasonable steps to assess and manage any risks involved, including potential reputational risks.
- Understand the standards that apply as set out in the Fundraising Code, and check whether the third party has registered with the regulator.
- Make sure third parties are monitored effectively to ensure that they are operating in line with the Fundraising Code.
- Consider the donor perspective and ensure that they can make informed decisions when giving to charity.
- Engage with the Fundraising Regulator for help and support.

Whilst the Fundraising Regulator does appreciate that a third-party needs to cover the costs and will seek to generate a reasonable profit, they do expect that the greater portion of money raised will be transferred to the charity. Trustees should ensure that this is indeed the case with any arrangements they enter into with external fundraising agencies so that they don't attract the attention of the regulators.

Details: https://bit.ly/455lbVR

Code of Fundraising Practice consultation

The Fundraising Regulator has launched a consultation on proposed changes to the Code of Fundraising Practice.

There are two key themes set out in the proposals, to combine and amend the existing rules into principles-based rules, and to replace rules where the Fundraising Regulator is not the lead regulator with signposting of relevant legislation and guidance. They are also consulting on areas where the Code could be expanded upon to take account of recent developments, such as increasing use of cashless giving and cryptocurrency to make donations, the use of social media and improving protection for fundraisers.

Interested stakeholders have until 1 December 2023 to comment on the proposals.

Details: https://bit.ly/3ZCpTJF

My Charity Commission Account

Charities in England & Wales need to be aware that CCEW has replaced the means by which they can file accounts and annual returns online. The new My Charity Commission Account service went live on 31 July 2023, and access to the previous digital service has been withdrawn. Any charity that is part-way through filing their 2022 annual return on the old system will not be able to complete this and will need to start afresh using the new service.

Over the coming months the service will be extended to all individual trustees, helping to facilitate a more direct relationship between the regulator and trustees, boosting the support they receive and enabling them to run their charities effectively.

Details: https://bit.ly/3tcAXks

Charity register update in Northern Ireland

CCNI is launching a new traffic light display that will indicate whether a charity has submitted its annual report and accounts on time. The new approach is due to be launched in December and will enable the public to easily see whether a charity has complied with its filing obligations. Charities that have filed late will have this fact highlighted, showing how many days late they filed. The use of the traffic light system will also make it easier to see where a charity's annual filing is overdue. It is hoped that these changes will help to encourage charities to ensure that they make their annual filings within the 10 month deadline so to avoid the adverse publicity that comes from being behind with their obligations.

Details: https://bit.ly/3Prvxtz

Accountancy and tax update

Improving the quality of charity accounts

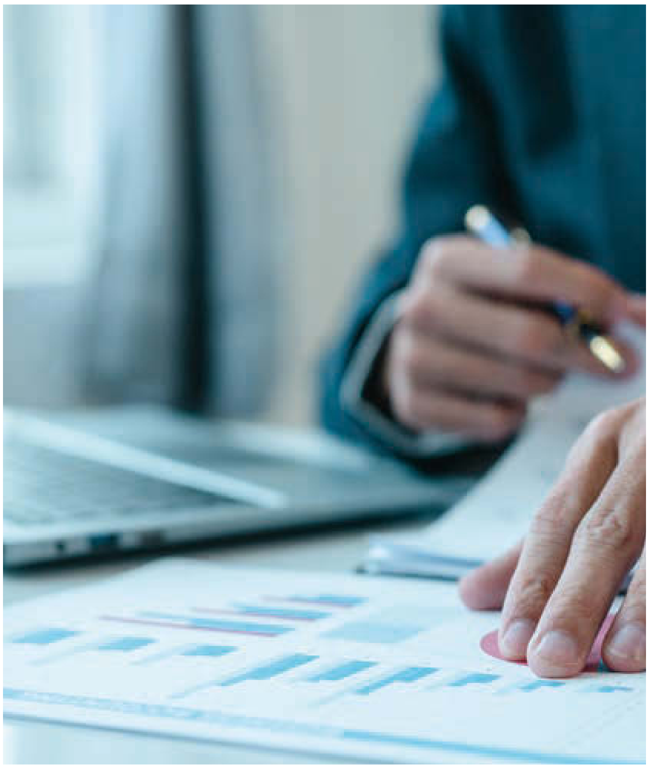
In the Spring 2023 edition of Charity News we reported that OSCR had performed a review of the quality of charity accounts submitted to them. One of the main issues they noted was a failure to include an accompanying trustees' report that complied with relevant requirements.

This has now been followed up with some guidance issued by OSCR on how to prepare a good trustees' annual report. Much of this merely signposts existing guidance , but they have set out some of the benefits that a good quality report can bring. The guidance highlights that by demonstrating public accountability and transparency a charity can indicate that good standards of governance are being applied which provides greater assurance to stakeholders and ultimately can encourage funders to support the charity.

Separately OSCR has also provided new guidance on the need for charity accounts to include comparative information and highlighted some of the common disclosure areas that accounts often omit, which include key disclosures related to trustee remuneration and other related party transactions.

It's not just in Scotland that issues have been found with charities failing to properly meet their reporting obligations. In May 2023 the CCEW published details of 'double defaulters', charities that have failed to submit their annual return and accounts for two or more years in the last five years and had previously been given final warnings to comply by a specified date but had failed to do so, resulting in CCEW commencing an inquiry process into them.

Most of the time this inquiry process results in charities getting their reporting obligations up to date, but in 15 cases it revealed that the charities were not operating or had ceased to exist and were removed from the Register, and in a further 6 cases serious regulatory concerns were identified and separate inquiry proceedings were opened to review how those charities operated.



Charities need to be aware that regulators do make use of the annual reports filed with them, or the lack of such reports, in carrying out their oversight of the sector and thus it pays for charities to ensure that they are compliant with their annual reporting obligations and meet all filing deadlines.

Details: bit.ly/3thneZZ

bit.ly/46glL18

bit.ly/3PGkJb1

Tax consultations

On Tax Administration and Maintenance Day earlier this year two consultations were launched of particular relevance to the charity sector.

Firstly there was the announcement of the Government's future engagement with stakeholders on reforming Gift Aid. It is understood this will involve assessing how administrative burdens can be eased through the use of digital technology, as well as developing new ways to test future Gift Aid development ideas using digital sandboxes.

The second consultation related to tax compliance, and plans for 'reasonable and proportionate' changes to reform tax relief rules that will supposedly help tackle non-compliance and protect the integrity of the sector. Four areas are being considered as part of the consultation:

- Preventing donors from obtaining a financial benefit from their donation and the operation of the Tainted Charity Donations rules
- Preventing abuse of the charitable investment rules
- Closing a gap in non-charitable expenditure rules
- Sanctioning charities that do not meet their filing and payment obligations.

Both consultations have now closed and we await announcement from HMRC of what changes to the tax regime they propose to make, details of which will be covered in future editions of Charity News.

Details: bit.ly/46jb80U

Charity rates relief

Charitable organisations in England can obtain a mandatory 80% reduction in business rates on any property it occupies and uses wholly or mainly for charitable purposes, with local authorities able to offer a further 20% discretionary relief. A recent Supreme Court case (London Borough of Merton v Nuffield Health) has confirmed the test for eligibility for this relief. The case hinged on whether a local authority could apply a local public benefit test at each individual site, distinct from the charity law test applicable to the charity's operations overall, as regulated by CCEW.

Fortunately in this case the charity won the day, and the judgement avoided the potentially confusing situation that could arise where local authorities could determine what constitutes public benefit, preserving charity law's jurisdiction over this issue. As a result any registered charity will be able to claim mandatory rates relief on any property "wholly or mainly used directly for activities which constitute the carrying out of the charitable purposes of the charity or, by a modest extension, for activities which directly facilitate or are wholly ancillary to the carrying out of those purposes". This will include properties used for activities such as fundraising, head office management, investment and the provision of staff accommodation.

The Court in reaching its decision also helped clarify some issues surrounding what constitutes public benefit which have a more general application, particularly for charities that operate across multiple sites.

For those interested in this case a more detailed analysis has been published by the Charity Tax Group.

Details: bit.ly/46gzMiO