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charities & education

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proposed changes to fundraising regulation

According to a survey published in February 2016 by the Institute of Fundraising (IoF) and the Small Charities Coalition (SCC), more than half of smaller charities in England and Wales fear that a proposed new Fundraising Preference Service (FPS) allowing members of the public to opt out of charity fundraising will lead to increased administrative costs. Around 40% of them also predict that it will cause a drop in donations. The survey was undertaken because of concerns that the needs of smaller charities are not being taken adequately into account by those responsible for implementing the recommendations of the 2015 Etherington Review into charities' self-regulation of their fundraising practices.

There are over 600,000 micro-charities (charities too small to register) in England and Wales, and a further 150,000 'small' charities (with an annual turnover of less than £1m). Together they make up the overwhelming majority of the UK charity sector, according to the survey report, and yet they have had relatively little input into proposed changes to fundraising regulation. In addition to the creation of the FPS, these proposed changes include a new charity fundraising regulator, a new code of practice (together with stronger sanctions for breaking it) and increased trustee responsibility for fundraising activities.

Of the charities surveyed, 45% were not very familiar or not at all familiar with the review of fundraising regulation, leading the IoF and the SCC to warn that *"there is significant work needed to raise awareness of the forthcoming changes to all charities"*.

Almost half of respondents felt that the issues of public trust that the Etherington Review addressed had not very much or no impact on their organisation, and only 29% felt that the FPS would result in a better public image. Training would be needed to enable staff to check the FPS list of opted out individuals against charities' own contacts lists, according to 54% of the charities surveyed, adding to costs and administrative burdens.

Most smaller charities supported stronger sanctions against charities whose fundraising violated a revised code of practice, but when it came to options for funding a new regulator, very few felt that they should contribute to its cost. The most popular funding strategy was a levy on charities that spend more than £100,000 on fundraising from the public, with 40% in support of this.

75% of survey respondents felt that the review's recommendation of greater trustee oversight of charities' fundraising would have little or no effect because *"trustees already play a clear role in or contribute to and set strategy for fundraising"*.

At a forum event for small charities held by the IoF and the SCC in London in February 2016, charity representatives raised concern about confusion surrounding the new FPS and expressed a hope that the role of the new fundraising regulator would include actively explaining to the public why charities need to ask for support, instead of just focussing on bad practice and complaints.

For more information about the survey, go to: http://bit.ly/1pEulpq

For IOC/SCC forum event for small charities, go to:http://bit.ly/21D3oOi

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Commission guidance clarifies rules on charitable trading

The Charity Commission has issued new 'CC35' guidance for charities, explaining the rules that govern their trading activities and giving updated legal advice about how much of the profit earned by a charity's trading subsidiary may be paid to the charity.

'Trustees Trading and Tax: How Charities may Lawfully Trade' clarifies which charitable activities count as trading and identifies the types of trading that are compatible with charitable status. It goes on to outline trustees' duties in relation to trading, focussing particularly on when a charity must set up a separate trading subsidiary, how the subsidiary must be run and how it can transfer its profits to the charity.

The new guidance has been published as a result of legal advice provided to the Institute of Chartered Accountants in England and Wales (ICAEW) in 2014, which stated that it is unlawful for a charity's trading subsidiary to pay all of their taxable profits to the parent charity if the amount donated exceeds the profits available for donation under the Companies Act 2006. It had been a common practice, mistakenly endorsed in the Charity Commission's earlier CC35 guidance, for trading subsidiaries to use Gift Aid to donate all of their taxable profits to the parent charity, thus avoiding corporation tax.

The guidance now makes it clear that it is unlawful for a charity's trading subsidiary to make distributions in excess of distributable profits. As a result, a trading subsidiary may have a tax liability when its taxable profits are greater than its distributable profits. Charities must ensure their operations comply with the revised guidance for any accounting period starting on or after 1 April 2015.

For more information about the new guidance, go to: http://bit.ly/21D3iWM

For ICAEW advice on how to deal with accounting issues that arise from complying with the amended guidance, go to: http://bit.ly/1WBTUSg

risk of domineering individuals highlighted by latest compliance report

A failure by charity trustees to take decisions collectively is often behind cases of poor governance, serious mistakes or deliberate mismanagement, the Charity Commission's latest annual compliance report has found. Commenting on the findings of 'Tackling abuse and mismanagement 2014/15', Michelle Russell, Commission Director of Investigations, Monitoring and Enforcement (IME) has urged trustees to guard against dominant individuals taking inappropriate control of charity management. According to Ms Russell, allowing an individual or small group to "wield excessive power or influence" may cause other trustees to "disengage, fail to contribute to or challenge ideas or decisions". This can in turn result in those trustees failing to discharge their legal duties.

The number of compliance cases opened from April 2014 to March 2015 was 45% lower than the number opened over the previous twelve months, with the Commission opening just 1,024 compliance cases in 2014/15 compared to 1,865 in 2013/14. In contrast, the number of new statutory investigations increased from 64 in 2013/14 to 103 new investigations in 2014/15. The number of new monitoring cases more than tripled over the two-year period, with just 96 monitoring cases opened in 2013/14, compared to 429 cases opened in 2014/15.

The majority of new statutory investigations in 2014/15 featured accounting concerns in 60% of inquiries, concerns about mismanagement or misconduct in 57% of cases, or both. Of the 53 statutory investigations concluded in the same period, 42 inquiries featured concerns about financial abuse or poor management of finances and 34 inquiries had found issues with trustees. Financial mismanagement was a feature of more than a third of the compliance cases closed in 2014/15 (398 cases out of a total 1,125).

Read more about 2014/15 compliance issues at: http://bit.ly/22ybjPe

in brief...

New Gift Aid declaration

Charities will be required to use new wording for Gift Aid declarations from 6 April 2016 following the publication of revised guidance by HM Revenue & Customs (HMRC). The new wording requires charities to state that if a donor has paid too little tax to cover their donation they must pay the difference. This arose as a result of HMRC's concerns that it could be paying Gift Aid to charities in respect of donations made by people who had not paid any tax. The revised guidance follows a National Audit Office report estimating that around £55 million might have been paid to charities in error in this way. It also applies to charity shops that claim Gift Aid on the proceeds earned from the sale of donated items. http://bit.ly/1RZSL2Q

Digital filing system for charities accounts developed

A new charity specific taxonomy that enables charities' accounts to be classified using the standard iXBRL system required by Companies House and HM Revenue & Customs (HMRC) has been developed so that charity accounts can now be filed digitally. The new classification system has been produced by the Charity Commission and the Financial Reporting Council (FRC) to make charity data more accessible. Although digital filing of accounts is now an option for charities it will not be made compulsory, as several leading charities including Cancer Research UK have expressed concerns that mandatory digital filing could be burdensome. However, Nigel Davies head of accountancy services at the Charity Commission, said that information from Companies House indicated that charities needed to be helped and encouraged further to use the new filing option. http://bit.ly/1RuvgEY

New Charities Act will tighten up loopholes in law

The Charities (Protection and Social Investment) Act 2016 which has passed through parliament will provide a variety of new powers for the Charity Commission to enable it to protect the assets of charities and tighten up loopholes in the law. The main changes under the Act will enable the Commission to issue statutory public warnings to charities where there is deemed to be a breach of duty or trust, or evidence of mismanagement or misconduct, and to disqualify a person from being a charity trustee for up to 15 years. Convictions for terrorism, money laundering and sexual offences will be added to the list of criteria that automatically disqualify anyone from becoming a trustee, and automatic disqualification will be extended to the management roles of chief finance officer and chief executive. http://bit.ly/22ybv11

Online 'strength checker' tool launched

A new online tool to help voluntary, community and social enterprise (VCSE) organisations to check their resilience has been developed by the Big Lottery Fund and the Cabinet Office. The tool will help to improve VCSEs' sustainability and performance by producing personalised reports highlighting key areas for improvement, as well as organisations' strengths in relation to marketing, track record, quality, impact, sustainability and strategy. The tool will signpost organisations to other sources of funding and advice. Voluntary sector organisations in Scotland and Northern Ireland will also receive in-depth assistance under the Path to Impact project, which will use the online diagnostic Core Capacity Assessment Tool (CCAT) that will enable funders to deliver more clearly targeted support. http://bit.ly/1RbVEA2

New guide to tackling charity fraud published

The Fraud Advisory Panel (FAP) and the Charity Commission have published a guide explaining how charities in England and Wales can deal with fraud, which they claim is inevitable in the voluntary sector. The guide, Tackling Fraud in the Charity Sector, summarises the key points made at a joint conference of the same name held by the commission and the FAP in October 2015, and provides tips for charities about how to prevent, detect and respond to fraud. It also outlines some of the most common scams inflicted on charitable organisations such as diversion frauds and false accounting, and advises charities to ensure they develop an ethical culture and have good governance and fraud management procedures in place, supported by regular annual fraud risk reviews. http://bit.ly/1ScuqcF

Registered charities received over £70 billion in 2015

According to statistics published by the Charity Commission, in 2015 the total income received by registered charities in England and Wales amounted to more than £70 billion, and around 71% of this was generated by charities that earned over £5 million per year. However, while 40% of the 165,290 registered charities had revenue of less than £10,000 per year, they accounted for only 0.3% of charities' total annual income. In comparison, just over 5% of registered charities had revenue between £500,001 and £5 million but they accounted for 18% of charities' total annual income. http://bit.ly/1R9Gw7B

'double defaulters' inquiry

The Charity Commission has announced the next phase of its statutory inquiry into charities that failed to submit accounts for at least two consecutive years from 2010 to 2015. The Commission's inquiry into these so called 'double defaulters' opened in September 2013 and has so far resulted in £68 million being accounted for transparently.

The Commission has been running the inquiry in phases, focusing on wealthier charities first. Double defaulters are initially issued with a final warning, then once a warning has expired, and if the recipient charity has failed to respond, their name is added to the Commission's list of charities requiring investigation. The Commission added 88 names to the list from the start of the inquiry to the end of 2015. The majority (73) had submitted accounts by January 2016, and were accordingly removed from the list. However, three charities were singled out for an individual inquiry after the Commission found serious compliance concerns.
The first phase of the inquiry covered charities with a last known annual income exceeding £500,000. The next two phases were launched in November 2013 and January 2015, and focused on charities with a last known income of between £250,000 and £500,000 (the second phase), and between £200,000 and £249,999 (the third phase). During the fourth phase, the Commission will look again at charities covered by the previous two phases. The Commission has also stated that it will consider investigating double defaulters with an annual income below £200,000 in early 2016. Announcing the next phase of the inquiry in January 2016, Carl Mehta, the Commission's Head of Investigations and Enforcement Operations commented: *"Charities are sent multiple reminders about their approaching deadlines, and with default notices. There is now an online tool that allows third parties to submit accounts, making the process easier for those involved - so there is no excuse for non-compliance".*

Read more about the inquiry at: http://bit.ly/1RepPoa

CC updates financial guidance for trustees

Two key guidance documents on charity finance for trustees of charities in England and Wales have been updated by the Charity Commission. The revised versions of 'Managing a charity's finances: planning, managing difficulties and insolvency' (CC12) and 'Charity reserves: building resilience' (CC19) were published in January 2016. According to the Commission, the current challenges facing charities mean that both documents are essential reading for trustees. The Commission has also updated '15 questions trustees should ask', in order to better reflect the current social and economic climate.

A report from Lloyds Bank Foundation, published in October 2015, found that smaller charities in particular are facing significant financial challenges. Of the 800 charity representatives surveyed by the Foundation, 81% said their organisation was finding it hard to obtain the funding necessary for survival, and 63% expected this to become even more difficult over the next two years.

The updated version of CC12 recommends that trustees review their charity's financial position at least monthly, as well as comparing the charity's performance against budgets and finance projections. The guidance also makes it clear that trustees should obtain professional advice if they believe their charity is insolvent, and where a charity has to close, trustees are expected to have planned an orderly shutdown.

The revised CC19 confirms that there is no one-size-fits-all reserve policy for charities. Any reserve targets set by trustees, or a decision that there is no need for reserves, must reflect the position of the individual charity. Trustees are recommended to monitor reserve levels throughout the year. Where reserves fall short, meaning the charity is exposed to greater risk, trustees must address the shortfall actively.

Read more about the updated guidance at: http://bit.ly/1LAyAfj

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