Charity **News**

Autumn 2022

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CHARTERED ACCOUNTANTS

Our Charity News includes the latest guidance and support available for the not-for-profit sector as the cost of living crisis starts to bite. 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

Charities and the cost of living crisis

Just a few months ago many charities would have been hopeful that with restrictions related to the COVID pandemic being relaxed things would return to normal and they could start to look to the future with optimism. Sadly though in 2022 the challenges for the sector keep on coming. At the start of the year the crisis in Ukraine saw many organisations looking to help with the influx of refugees as well as those still in Ukraine living through the conflict. Natural disasters such as the wide scale flooding in Pakistan presented another challenge for those charities operating internationally that provide disaster relief. Closer to home we now have a cost of living crisis and again the charity sector is faced with having to cope with an increase in demand for the support they provide whilst at the same time having to manage the impact the crisis is having on their own financial position.

Maintaining income levels is going to be a particular concern for nearly all charities. Recent research published by the Charities Aid Foundation revealed that 13% of people are planning to reduce the amount they give charity as they manage the implications of rising costs on their own finances. Their UK Giving Report 2022 shows that the amount given to charity in 2021 of £10.7bn was already down on the previous year figure of £11.3bn, and a long-term trend of reducing numbers of people giving to charity has been firmly established, although the British public remains willing to give in exceptional circumstances such as in response to the Ukraine crisis. It's not just financial donations that show a decrease, with the number of people volunteering their time also decreasing when compared to pre-pandemic levels. Charities need to be aware of these trends and what it could mean for them, and seek to find new ways to engage with donors with a view to maintaining levels of support.

Even if income is maintained at previous levels, with inflation of around 10% this represents a real-terms reduction, with charities experiencing the same pressure on costs as those they are looking to help. With many charities reliant on fixed monthly donations from their supporters Pro Bono Economics, in their guidance on what UK charities need to know about inflation, estimate that a £20 monthly donation set up in 2017 will only be worth £14.90 in 2024. Inflation also impacts those charities fortunate to have reserves. A charity that had sufficient cash reserves pre-pandemic to meet 4.21 months of expenditure (this is the average for charities with between £500,000 and £1m of income) is expected to find that by 2023 the same level of reserves will only meet 3.48 months of activity.

Help is out there for charities that need it. The National Council for Voluntary Organisations (NCVO) has a dedicated page on its website for charities needing guidance on how to respond to the cost of living crisis, that covers not just financial issues but also how to support the mental health and wellbeing of staff and volunteers that may be having to help those in increasingly distressing situations.

In this edition of *Charity News* we have articles on specific issues related to the crisis, including on how the government is looking to address the impact of rising energy costs and how high levels of inflation is influencing employment costs with the announcement of the latest real living wage figures. Regulators are clearly concerned, as evidenced by proposals from CCEW to include questions in the annual return that are designed to assess a charity's ability to respond to major events.

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

https://bit.ly/3rl98T0

https://bit.ly/3y6or5H

Public trust in charities

The level of trust placed in the charity sector remains high, despite there being an overall decline in the level of trust being placed generally in public bodies, according to a report recently published by CCEW. The charity sector is placed second in the list of the most trusted parts of society, with only doctors being ranked higher.

The report does show though that support for the sector may have plateaued and that it remains significantly below historic highs in how important charities are perceived to be, with only 56% of those polled believing that charities are 'essential' or 'very important'. Many remain sceptical about the value charities can bring and have doubts about propriety and governance.

To address these concerns, four key public expectations have been identified that charities need to meet:

- That a high proportion of charities' money is used for charitable activity;
- That charities are making the impact they promise to make;
- That the way they go about making that impact is consistent with the spirit of charity; and
- That all charities uphold the reputation of charity in adhering to these expectations.

Charities need to be aware that transparency remains vitally important if these expectations are to be met, with implications for their financial reporting. Concerns continue to exist that too great a proportion of charitable funds are being spent on administration and overheads, not on meeting their charitable objectives, with high executive salaries being highlighted as an area of particular concern. Charities need to be able to clearly demonstrate how funds are being spent and that expenditures are being controlled and can be justified.

Separately OSCR has published its 2022 Charity Survey, which mirrors some of the findings of CCEW. They too highlight the high levels of trust being placed in the sector, but that mismanagement and the perception of inappropriately large salaries are the most common concerns over trustworthiness. The report also highlights some of the key motivations given by donors for supporting a particular charity, with trust, the perception that the charity is doing something important and personal connections / experience of the charity being cited as the most important.

Awareness of issues such as those highlighted by the charity regulators help trustees to set their longer term strategy, by reminding them of the need to be aware of what the public expects of them, and the need to be proactively transparent when it comes to explaining how they fulfil their charitable objectives.

Details: https://bit.ly/3Cm7MgW

https://bit.ly/3y7kw8N

Energy costs

To address some of the concern over increasing energy prices the Government has announced an Energy Bill Relief Scheme. This will apply to all non-domestic customers, including businesses, the voluntary sector and public sector organisations, and will provide a discount on wholesale gas and electricity prices that is equivalent to the Energy Price Guarantee that has been put in place for households. The discount will apply to any fixed contracts entered into on or after 1 April 2022 as well as to deemed, variable and flexible tariffs in respect of energy usage from 1 October 2022 for an initial six month period. The discount will be automatically applied to energy bills.

Separately changes will be made to the Energy Bills Support Scheme to ensure that the £400 discount to households will reach the estimated 1% of households that would otherwise not have received this support, such as park home residents and those tenants whose landlords pay for their energy under a commercial contract.

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

Cryptocurrency and NFTs

In recent months both CCEW and the Fundraising Regulator have sought to promote the opportunities available to charities from the use of cryptocurrency and non-fungible tokens (NFTs) whilst at the same time highlighting some of the risks involved. Cryptocurrency is a form of unregulated digital currency which uses technology to record the transaction history and for making payments between users. NFTs are digital artworks that are created using similar technology to cryptocurrency.

Some charities have already begun to accept donations in the form of cryptocurrency, or benefited from receiving the proceeds from the sale of NFTs. Doing so may have enabled them to access new donors and funds that may be denied to them previously. Doing so has benefits for the donors too, with the technology involved enabling them to more clearly see how the donation has been spent on charitable activities.

The problems for charities come primarily in three areas:

- A lack of transparency over the source of donations received making it more difficult for charities to ensure that they are not being used to conceal money laundering or other criminal activity.
- Volatility in the value of cryptocurrency when compared to traditional currency, increasing the risk for charities in accepting funds in cryptocurrencies or when holding operational or investment funds in cryptocurrencies.

- The environmental impact of cryptocurrency, which has a significant carbon footprint given the vast amount of electricity utilised by the technology involved.

In its guidance the Fundraising Regulator sets out how the Code of Fundraising Practice addresses issues such as these, and the areas that trustees should consider when considering whether accepting cryptocurrencies and NFTs is in the best interests of the charity. CCEW's guidance has similar conclusions, and reminds trustees to document their decision-making carefully to be able to demonstrate that they have fulfilled their legal responsibilities and not put their charity at risk.

Guidance: https://bit.ly/3y7kQ7v

https://bit.ly/3BYB8R8

Charity law reform

In our last edition we reported on the reforms set out in the Charities Act 2022. More information is now known on when these reforms will take effect, with the following changes expected to come into force this autumn:

Paying trustees for providing goods to the charity

At present charities can only pay their trustees for goods provided as part of a related service. Following implementation of the Act this will be extended to all goods.

Fundraising appeals that do not raise enough or raise too much

The complexity surrounding such situations will be reduced, for example introducing a simpler process for obtaining CCEW authority on how to deal with the funds raised, or if less than £1,000 to spend the funds raised on different purposes than what they were raised for without CCEW involvement. The current requirement in some circumstances to wait six months for donors to ask for a refund will also be removed.

Other changes expected to come into force this autumn include:

- Power to amend Royal Charters in areas that cannot currently be changed, with Privy Council approval.
- A simplified approach for charities changing their governing document by a parliamentary scheme.
- Confirmation that the CCEW's scheme making powers include schemes for charitable companies.
- Automatic trust corporation status for corporate charities in respect of any charitable trust that corporation is a trustee of.
- Updated provisions related to giving public notice of consents and orders made by CCEW.

Other reforms to how charities sell, lease or transfer land and provide greater flexibility to make use of permanent endowments are expected to come into force next spring, with the last wave of reforms including changes to how charities can amend their governing documents planned to come into effect in the autumn of 2023. Plans to reform the treatment of ex gratia payments are being considered further and it has not yet been announced when these will come into effect.

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

One implication of these reforms that has recently been highlighted by The Institute of Art & Law is that it should make it easier for museums to return an item in their collection to its country of origin for moral reasons, such as the recent move by Jesus College, Cambridge and the Horniman Museum to return several Benin Bronzes to Nigeria. The reforms to ex gratia payments will enable museums to return lower value items without Charity Commission approval. More significantly though it will allow statutory charities to also return items on moral grounds, where currently they are prevented from doing so by the Act of Parliament that governs their activities. Such restrictions are often cited by the larger national museums as a key reason why they are unable to return items to their source.

Museums considering the restitution and repatriation of items in their collection may find recent guidance issued by the Arts Council England helpful.

Guidance: https://bit.ly/3CnLX0P

https://bit.ly/3UTNiDN

In Scotland the devolved government has announced that their 2022/23 legislative programme includes a proposed Charities (Regulation) Bill that aims to strengthen and update the existing framework in order to increase transparency and accountability and maintain public trust and confidence in the sector. The move has been welcomed by OSCR, but full details of the proposals are still awaited.

Details: https://bit.ly/3y5LuOa

Annual return changes

CCEW has held a consultation on the content of the annual return, proposing a number of changes to aid their regulation of the sector. The consultation has now concluded and the responses are still being analysed, but it seems clear that charities will have to answer a significant number of additional questions as part of their annual reporting to the Commission.

For the first time there will be the ability for the annual return to include questions designed to ascertain the charity's ability to respond to major external changes. CCEW clearly wants to be able to better assess any threats to the sector from events recently seen such as the COVID pandemic or the Ukraine crisis.

Some of the other key proposed changes include:

- Identifying charities that are dependent on key supporters for a significant proportion of their income.
- Improving clarity on whether trustees have been paid by the charity or any connected organisations for the supply of goods and/or services.
- Requiring greater information on grants paid to individuals and other charities, highlighting whether any of those grants were to connected parties.
- Details of how overseas income was paid to the charity.
- Providing details on the premises from which the charity delivers services.
- Details of property belonging to unincorporated charities that is held by custodian trustees other than the Official Custodian.
- The location of any websites that are hosted outside the UK.
- Details of any wider organisations that the charity may be a member of.
- Details of any trading subsidiaries that have been dissolved.
- Information on the number of employees a charity has both in the UK and overseas, and the total payroll cost.

Once CCEW have completed their review of the consultation responses, new annual return regulations will come into force that will apply to financial years commencing on or after 1 January 2023.

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

Use of cash couriers

Cash couriers are those persons who physically transport cash from one jurisdiction to another. In conjunction with the Counter Terrorism unit of the Metropolitan Police, CCEW has published a warning to charities operating internationally against the use of cash couriers as a means of transferring charity funds due to the significant risks involved. Those risks include:

- As cash couriering is known to be used by terrorist and criminal organisations when challenged, if police or ports officers are not satisfied that the sources or end use of the cash cannot be accounted for, it is likely to be seized under the Terrorism Act 2000 or Proceeds of Crime Act 2002 and potentially forfeited on a successful application to the courts.
- Recovering any cash seized in this way is likely to take a significant amount of time, inconvenience and cost, with the potential to result in operational delays and reputational damage.

- Carrying significant amounts of cash makes the courier a target for criminals.
- The difficulty in maintaining an audit trail and adequate records that make it difficult to account for the funds and demonstrate that they have been used for charitable purposes.
- Cash couriers are not regulated, leading to concerns over their quality and reliability.

CCEW's guidance urges charities to use established, regulated banking systems for transferring charitable funds wherever possible. Failure to do so may be considered to be misconduct and/or mismanagement of the charity if trustees cannot show that they have managed the risks associated with the use of cash couriers effectively. They do acknowledge though that in exceptional circumstances the use of cash couriers is unavoidable, and sets out some of the steps charities should take in order to minimise the risks involved.

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

Accountancy and tax update

Mini-Budget

On 23 September the then Chancellor Kwasi Kwarteng published his Mini Budget, or The Growth Plan 2022 as it was more properly known. The impact this has had on the economy since its publication are well documented and led to Kwarteng's resignation and much of his planned changes being reversed by his successor Jeremy Hunt, with the possibility of further changes to come. The situation is ever changing and can be confusing but we shall summarise on the tax measures that have been announced as at the time of writing that will have the greatest effect on charities.

Income tax and Gift Aid

Before the Mini Budget was announced there was already a planned reduction in the basic rate of income tax from 20% to 19% to take place in 2024. This was to apply across the UK except where the Scottish Parliament has the devolved power of setting income tax rates in Scotland. At first it was announced that this reduction was to be brought forward a year, but this was one of the changes that Jeremy Hunt made on coming into office and now any reduction in income tax rates have been put on hold for the foreseeable future.

The transitional relief that was to apply, protecting charities from the potential loss of Gift Aid that could arise from a reduction in the basic rate of income tax, is of course no longer necessary.

Payroll

Those charities which are also employers will be pleased to know that the 1.25% increase in National Insurance that was only introduced last April will be reversed for payments from 6 November 2022. In addition the Health and Social Care Levy that was due to be introduced in April 2023 has been scrapped. This is one of the few announcements made in the Mini Budget that continues to apply.

The Mini Budget also announced that recent reforms to the off-payroll working rules will be repealed from 6 April 2023. This will no longer go ahead, meaning that charities will continue to be required to determine the employment status of any workers who provide their services via an intermediary and paying the appropriate amount of tax and National Insurance.

Corporation tax

The planned increase in the rate of corporation tax to 25% that was due to be introduced in April 2023 will continue to take place, despite initial plans outlined in the Mini Budget to withdraw this increase. Those with lower levels of profit are likely to see little change though, as the higher rate of tax will only apply to companies with taxable profits in excess of £250,000. The current rate of 19% will continue to apply for those companies with profit below £50,000, with the increase tapered for those with profits between those two limits.

Benefits

Support and incentives provided to those on Universal Credit is to be increased through changes to the Administrative Earnings Threshold (AET) that will apply from January 2023. The AET will increase to 15 hours a week at National Living Wage for an individual claimant and 24 hours a week for couples. More Universal Credit claimants will be asked to take steps to seek more work or risk having their benefits reduced.

Details: https://bit.ly/3Se4a5m

Gift Aid and naming of buildings

It has been confirmed by HMRC that the naming of a building after a donor who had given a substantial amount to the charity does not count as a donor benefit that would restrict a charity's ability to claim Gift Aid on the donation. For this treatment to apply the naming must not act as an advertisement or sponsorship for a business. HMRC's guidance on Gift Aid has been updated to reflect this confirmation.

Guidance: https://bit.ly/3RrhbZ8

VAT changes

HMRC has made changes to two key VAT Notices for the charity sector.

VAT Notice 701/1 *How VAT affects charities* has seen the business test section updated to reflect a two stage test to bring it into line with a recent policy change. It makes clear that although an organisation may be run on a not-for-profit basis it could still be regarded as a business for VAT purposes if there is a direct link between the services received and the payment made. This is ascertained through a two stage test:

- **Stage 1:** The activity results in a supply of goods or services for consideration.
- **Stage 2:** The supply is made for the purpose of obtaining income (remuneration).

As a result of this change in approach certain charities may now be considered to be carrying on a business for VAT purposes, with childcare charities providing nursery or creche facilities being one area that could be caught.

VAT Notice 701/58 *Goods or services supplied to charities* has also been updated to make clear when zero rate VAT can be applied for advertisements and goods used for the collection of donations.

Guidance: https://bit.ly/3UOXai2

https://bit.ly/3SKnU1j

Living wage

All employers are required to pay their staff either the National Living Wage (for those aged 23 and over) or National Minimum Wage (for those of at least school leaving age). The Living Wage Foundation is a charity that campaigns for improved rates of pay for those on low wages, with accredited employers, including many charities, committed to paying their staff at pay rates of at least the 'real Living Wage' as determined by the Foundation.

In September the Foundation announced that, based upon independently calculated rates based on what people need to live on, the real Living Wage was now £11.95 per hour for those living in London and £10.90 per hour elsewhere in the UK, which is considerably greater than the hourly rates required to be paid by law (£9.50). This represents a 10.1% increase compared to last year. This increase is set to boost the pay of over 390,000 workers at over 11,000 employers who have signed up to the scheme.

Accredited employers are encouraged to implement the new Living Wage rate as soon as possible.

Details: https://bit.ly/3V3KLXN

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