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CHARITY NEWSLETTER

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INFORMATION COMMISSIONER INVESTIGATING CHARITY DATA SHARING: [Return to contents](#)

There has been a lot of media comment recently regarding personal information being “shared” by charities. The Information Commissioner has issued a [Press Release](#) which states:

“The Data Protection Act is very clear: the very first principle is that your data should only be processed fairly and lawfully. What has been described in the papers this week doesn’t look like that. If an individual is still being plagued with unwanted mail and unwanted approaches, then it is really beside the point whether or not they ticked a box in 1994.

The law expects you to bear in mind people’s interests and people’s expectations. If people say ‘I never gave you permission to do that’ and you respond ‘well, yes you did actually, because in 1994 you forgot to tick a box’, then that isn’t consent. That doesn’t give you the right to trade in people’s personal information years after the event.

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There is a danger here of blackening a whole sector. Charities seem to be becoming the new dirty word, and that clearly isn't fair. But the rules on data protection and the rules about privacy and electronic communications apply to all who are processing data, whether businesses or charities. Everyone's got to stick to the law, and if the law's been broken then we will act.

We've got the power to issue civil monetary penalties where there have been serious breaches of the Data Protection Act – of up to £500,000. If there's been criminal activity then we'll prosecute in the Magistrates Court.

Our work is part of three investigations going on into the charity sector at the moment. As well as my enforcement team's investigation, there's Sir Stuart Etherington's work, sponsored by the Cabinet Office, looking at the regulation of charity fundraising, and there's also a Parliamentary Select Committee looking at this. I think when all that work's been done we'll see if any changes to the law are necessary. My job is to enforce the law as it stands.

Over the last five years we've been working with the Police and Trading Standards on a project called Think Jessica, which is all about vulnerable people being placed on what are called 'suckers lists' and being targeted again and again and again by scam merchants. If there's any connection between the good work that charities do and the scam merchants, that's very concerning and we've got to get to the bottom of how that information has been passed on.

A very interesting development in this story is the use of the right of subject access, which everyone has under the Data Protection Act. It means you can ask organisations to show you what they hold on you, which could help you track down how your information may be being misused. There's more details about this on our website."

UPDATED CHARITY COMMISSION GUIDANCE ON TRUSTEE'S ROLE: [Return to contents](#)

The Charity Commission has updated and released guidance on the role and responsibilities of being a charity trustee. Their [Press Release](#) accompanying the issue of the updated guidance states:

"Being a trustee is a serious responsibility, but it doesn't have to be daunting, if you are armed with the right knowledge and understand your duties. This is what CC3 is about.

The updated '[Essential trustee](#)' breaks down the trustee's role into 6 clear duties:

- Ensure your charity is carrying out its purposes for the public benefit;
- Comply with your charity's governing document and the law;
- Act in your charity's best interests;
- Manage your charity's resources responsibly;
- Act with reasonable care and skill; and

- Ensure your charity is accountable.

Under each heading, the Commission explains the legal requirements that trustees must meet, and the good practice they need to follow, to operate effectively and comply with their duties. From there, you can go to more detailed guidance if you need an in-depth understanding. For example, there are links to guidance on fundraising, making better decisions and reducing the risk of liability. The Commission also provides a [summary guide](#) if you want the headlines at a glance.

Even if you have been a trustee for years, you will still benefit from looking at the new guidance and brushing up on your legal duties and essential good practice. The Commission makes it clearer that trustees are expected to follow good practice, applying it appropriately to their charity's circumstances. It's not an optional extra.

Time and again, the commission finds that serious concerns about a charity have their root causes in weak governance. It manifests itself as failure in at least one of the trustees' 6 key duties. All too often trustees have failed to comply with their governing document, deal with conflicts of interest, or implement sufficient procedures and controls. It creates opportunities for serious wrongdoing such as fraud or abuse of beneficiaries. The new guidance highlights and gives practical examples of how to avoid some common pitfalls, for example by ensuring you understand your governing document, asking questions and ensuring you understand your charity's finances. So you can feel confident that you're running your charity in a legal, accountable and effective way.

This isn't just about keeping in the Commission's good books. It's essential if you want to be more effective at meeting your beneficiaries' needs, and enhance your credibility with potential funders, supporters and the wider public.

The charity sector and the Commission are under increasing scrutiny from the public, media and government. The new 'Essential trustee' should help you to be confident about fulfilling your responsibilities as a trustee. It's designed to help you make decisions as a team of trustees, so that you never have to feel like you're on your own, or just muddling through. But for those trustees who don't take their legal duties seriously enough, it's the standard that they will be measured against."

PROPOSED AMENDMENTS TO CHARITY SORP: [Return to contents](#)

The Charity Commission has issued a [Press Release](#) regarding the following proposed amendments to financial reporting for charities, which states:

"Changes to UK-Irish accounting practice, due to take effect from 2016, mean that the Charities SORPs (Statements of Recommended Practice) will need to be updated. The Charity Commission for England and Wales and Office of the Scottish charity Regulator, who together are the SORP-making body, have launched a consultation to hear charities' views on proposed changes to the SORP. These proposed changes anticipate the implementation by the Financial Reporting Council (FRC) of its proposed changes to accounting standards in 2016.

The SORPs have to be updated to comply with the expected changes to accounting standards by the FRC. The FRC requires that a SORP must:

- Be prepared in accordance with the FRC's Policy and Code of Practice on SORPs; and
- Include no fundamental points of principle that are unacceptable in the context of current practice or to conflict with an accounting standard.

The expected changes to GAAP mean that:

- The Charities SORP (FRSSE) will not apply for reporting periods (financial years) beginning on or after 1 January 2016; and
- Changes are needed to the Charities SORP (FRS 102) effective for reporting periods (financial years) beginning on or after 1 January 2016.

The Charity Commission for England and Wales and the Office of the Scottish Charity Regulator are now seeking charities' views on proposals being made for updating the Charities SORP (FRS 102). The consultation documents and draft schedule of changes, called an Update Bulletin, can be viewed via the dedicated SORP micro-site: www.charitycorp.org."

The [Update Bulletin](#) highlights that the following amendments are proposed to the Charities SORP (FRS 102):

- **“Module 6: Donated goods, facilities and services, including volunteers:** amending the measurement basis of the carrying value for inventories held for distribution at no or nominal consideration to require their measurement at the lower of cost adjusted, when applicable, for any loss of service potential and replacement cost. The bulletin offers a definition of ‘replacement cost’;
- **Module 10: Balance Sheet and Module 24: Accounting for Groups and the Preparation of Consolidated Accounts:** revising the maximum period over which goodwill and other intangible assets may be amortised from five to ten years in those exceptional cases where an entity is unable to make a reliable estimate of the asset's useful economic life;
- **Module 12: Impairment of assets:** prohibiting the reversal of impairment losses for goodwill;
- **Module 17: Charity mergers:** prohibiting merger accounting for charities that are companies and enter into a business combination with a third party; and
- **Appendix 1: Glossary:** amending the definition of larger charities.”

CHARITY COMMISSION REPORT INDICATES LARGER CHARITIES UNDERSTATE THEIR CHARITABLE EXPENDITURE: [Return to contents](#)

A report has been by the Charity Commission which suggests that many larger charities are understating their charitable expenditure in their public annual returns or their accounts. The [Press Release](#) accompanying the issue of the report states:

“The regulator scrutinised the trustees’ annual reports and accounts of over 180 charities whose annual returns suggested they had spent less than 10% of their income for the year in question on charitable activities.

The results suggest that the majority of these charities (57%) were able to provide reasonable explanations for the low expenditure against income for the year in question - such as the receipt of large ‘one-off’ donations or the accumulation of reserves for specific projects.

However, it found that the remaining 43% had made errors either in their annual returns or their trustees’ annual reports and accounts, with the effect of significantly underreporting the level of their charitable expenditure

The Commission points to research showing that ‘ensuring a reasonable proportion of donations get to the end cause’ is among the most important factors driving public trust and confidence in charities and points out that such errors risk alienating supporters or potential supporters.

Accountability is a fundamental principle of charity and trustees must ensure their charities report on their finances and activities accurately and in a timely manner.

Three charities’ accounts reflected more serious non-compliance issues. Their accounts had not been audited, as required for charities with incomes of over £500,000, in either the year that the commission reviewed for the study or their most recent submissions. Two of the charities had also not recorded any value for charitable expenditure in their accounts. The Commission refused to accept these returns and has insisted these charities resubmit compliant accounts for the years in question.

The commission says it will increase its work to promote its guidance to help improve awareness and compliance.”

REVISED TAXATION GUIDANCE FOR COMMUNITY AMATEUR SPORTS CLUBS: [Return to contents](#)

Guidance from HM Revenue & Customs for charities is in the process of being migrated to “gov.uk”, and the “[Home Page](#)” also includes a number of Charity Commission links.

Included within this are updates to guidance for [Community Amateur Sports Clubs](#) (“CASC”), as there was an amendment, effective from 1 April 2015, regarding income levels at which a CASC will have a potential taxation liability on its trading income.

From 1 April 2015, a CASC will fall within the scope of corporation tax:

- If your turnover is more than £50,000 (£30,000 before 1 April 2015), corporation tax will be payable on profits; or
- If you rent out property and the income is more than £30,000 a year (£20,000 before 1 April 2015). The £30,000 limit can include income from both members and non-members.

Included within the guidance are a number of examples, to illustrate the application of the revised thresholds.

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) BILL:

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The Charities (Protection and Social Investment) Bill was included within the Queen's Speech, and the [Press Release](#) from the Charity Commission highlights its importance for the following reasons:

“One of the shortcomings in current charity law means that a charity trustee can resign and become a trustee or a senior member of staff in another charity without the commission having the power to stop him or her from doing so. Giving the commission additional powers to prevent this happening will help reduce abuse in the charity sector.

The Bill will also give the commission the power to issue formal warnings to charities which breach charity law to ensure they take corrective action. It also includes a power to enable the commission to direct a charity to be wound-up following an investigation, where to do so would be more appropriate than attempting to restore that charity to health. The Bill also includes a pre-emptive power to stop a charity breaching the law, for example such as intending to disclose personal data about its beneficiaries.

The Bill has already been through consultation and scrutiny by a joint Parliamentary committee and will be published in full upon the Bill's first reading. The Bill in addition will empower charities to make social investments.”

Separately, a [Press Release](#) summarises the key aspects of the two main elements of the Bill as follows:

“Protection of charities:

Charities rely on generous public support to carry out their vital work. Deliberate abuse of charities is relatively rare compared to the size of the charity sector, but needs to be tackled robustly to preserve public trust and confidence. The Bill would equip the independent regulator, the Charity Commission, with the tools it needs to more effectively tackle all the types of abuses of charity it faces. This in turn should protect charitable donations, and reassure the giving public that charities are well-regulated.

In addition to stronger powers for the regulator, the Bill would also tighten criteria for people to become a charity trustee or senior manager. It would extend the existing

criteria which disqualify a person from being a charity trustee to people with unspent convictions for criminal offences including terrorist offences, money laundering and various other offences. The Bill also extends disqualification to cover senior management positions in charities.

Social investment

The Bill implements a Law Commission recommendation to give charities a power to make social investments. Social investment is an investment that aims to achieve both a financial and a social return. Currently there is some legal uncertainty over charities' ability to make social investments, which is putting charities off making social investments. The government asked the Law Commission to review the law. It did so and following consultation recommended a new legal power for charities to make social investments. This is a permissive power, which aims to make it easier for charities that want to make social investments to do so."

ACADEMIES ACCOUNTS DIRECTION 2014 – 2015 (SORP 2005):

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The Education Funding Agency has [issued the Academies Accounts Direction](#) for the current accounting period. (An additional, SORP 2015 Direction has been published for Academies incorporated between 1 January and 28 February 2015, although the requirement for this Direction to be used is likely to be very rare).

The Direction itself states that the following are the main changes from the previous Academies Accounts Direction:

“Audit:

- We have clarified that auditors should inform NAO and EFA if they are issuing a qualified audit report or a modified regularity opinion to the academy trust, after discussing this with the trustees; and
- We have amended the auditor's report within the model accounts (Coketown) to clarify that it should be addressed to the members of the academy trust.

Governance:

- We have clarified that the Accounts Direction applies to all types of academy trust with a funding agreement with the Secretary of State for Education;
- We have confirmed that the method of submitting the accounts and auditor's management letter to EFA should be through Document Exchange;
- The governance statement re-emphasises that academy trusts must carry out a governance review in their first year and should also be doing this annually as a matter of best practice; and
- We have introduced a new section about value for money into the governance statement. This replaces the requirement for trusts to publish separate value for money statements, which are withdrawn from the year ended 31 August 2015.

Financial reporting:

- The Coketown disclosure note for donations has been split between fixed asset donations and other donations;
- We have illustrated in Coketown how loans and creditors due after more than one year should be disclosed;
- We have updated the list of funding streams that comprise General Annual Grant (GAG) for the purposes of calculating amounts carried forward at year end;
- Individual disclosure of non-contractual severance payments should now be made on an individual basis regardless of value;
- We have clarified that the disclosure of trustee remuneration includes employer pension contributions;
- We have clarified that if a multi-academy trust's (MAT's) funding agreement applies the GAG carry over restriction at the overall trust level, rather than at the individual academy level, then the carry over note need only report at the overall trust level;
- We have introduced a new section on connected charities;
- We have revised the section on accounting for buildings and provided additional guidance on buildings occupied by church academies, based on the substance of the arrangement rather than on its legal form;
- We have introduced a new section on accounting for academy combinations and dissolutions;
- We have introduced a new section on accounting for agency arrangements; and
- We have introduced a new section on accounting for risk protection arrangements.

The meaning of 'trustee', 'director', 'governor' and 'member':

In this document there are frequent references to trustees. This is the same body of people as both the directors of the company and the governors of the academy; these words are used interchangeably. The trustees have a different status to the members of an academy trust.”

HAT COURSE DATES: [Return to contents](#)

To ensure that all members of your team who deal with the preparation and audit of charity financial statements are fully trained, [HAT will be running the following CPD course:](#)

➤ Introduction to Charities ~ A Practical Guide ~ Tuesday 23 February 2016

This CPD course will be running in Central London. This and our “Charities Update ~ the new Charity SORPs and FRS 102” course may alternatively be run, “in-house” at firm’s offices on a mutually convenient date during 2016.

For details of our charges and availability, please contact Roger Morris at the HAT Office at roger@hatgroup.co.uk.

HAT AUDIT MANUALS: [Return to contents](#)

HAT Academies Manual:

The HAT Academies Manual has been updated to reflect the requirements in the Financial Handbook (September 2014) and Academies Accounts Direction 2014 to 2015 (SORP 2005) published by the Education Funding Agency (EFA). The Manual is effective for periods ending 31 August 2015 and should be used on conjunction with the HAT Charities Manual – March 2014.

Where an Academy’s accounting period commenced before 1 January 2015 (which will be the case in almost all circumstances) the client is prohibited from early adopting FRS 102 and thus must follow the Accounts Direction above, which continues to be based on the 2005 Charities SORP. Where a new academy was incorporated on or after 1 January 2015 but is drawing its first financial statements up to 31 August 2015, it must use the Academies Accounts Direction 2014 to 2015 (SORP 2015) which is based on the revised Charities SORP (FRS 102).

The National Audit Office has also published [instructions for component auditors](#) of academies (i.e. all firms undertaking an academy audit). Where relevant, this information has been incorporated into the Manual, but all auditors should download and read this document.

Important Note

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