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Charity Newsletter 2017

Introduction

We are delighted to issue our Annual Newsletter. If you would like more detailed information on its content or any other matters, please do not hesitate to contact Colin Liddell, who is an accredited specialist in Charity Law and head of our Charities and Communities Team (colin.liddell@hmittchell.co.uk), or Sarah Rennie (sarah.rennie@hmittchell.co.uk).



Colin Liddell



Sarah Rennie

Charity Seminar 2018

We are now planning our 2018 annual charity seminar for Spring next year. We will let you know we soon as a date has been confirmed. In the meantime, if there are any particular topics you would like to see covered this year please do send your suggestions to Sarah at the e-mail address above.

We will definitely be including a practical section covering the new General Data Protection Regulation and what this means for charities and community organisations from 28th May.

The General Data Protection Regulation

The upcoming changes to Data Protection have been well publicised with the introduction of the EU General Data Protection Regulation in May 2018 and the UK Data Protection Bill which is set to be passed at the same time.

We are currently preparing a Factsheet with practical guidance for charities and community organisations which will be published shortly. We will let you know as soon as this is available.

In the meantime if you require any specific guidance or advice please do contact us.

The Information Commissioners Office (ICO), which regulates data protection compliance in the UK, have now launched a data protection advice service helpline aimed at people running small businesses or charities on 0303 123 1113.

Resources and a self-assessment tool-kit can also be found on the ICO website at:

<https://ico.org.uk/for-organisations/data-protection-reform/getting-ready-for-the-gdpr/>

Community Bodies – Is your Constitution up-to-date?

If your organisation is a Community Body under the Land Reform Act you should check that your current Articles of Association or Constitution still meet the criteria.

The criteria was recently updated by the Land Reform (Scotland) Act 2016, with further changes being introduced later this year, and more in early 2018 by the Community Empowerment (Scotland) Act 2015.

If your Articles of Association or Constitution have not been updated to reflect the new requirements then your organisation will no longer be eligible to proceed with a Community Right-to-Buy in respect of any community interest currently registered or that it may wish to register in the future.

The key changes being introduced include (but are not limited to):-

- at least 75% (and not simply a majority as before) of the Members must be resident in the area; and
- a new Clause is required to state that the Community Trust will provide meeting minutes to those that request them.

If you would like assistance in bringing your Articles of Association or Constitution up to date and compliant with the new criteria, please let us know and we can guide you through this process.

New requirement for Trusts to maintain a Trust Register

The Money Laundering Regulations 2017, which came into effect on 27th June 2017, now requires UK Trusts to keep a Register of beneficial owners. Trusts that have a UK tax liability will also require to register with the HMRC Trust Register by 31st January 2018.

There is no specific exclusion for charitable trusts. This means that the Trustees will be required to maintain an internal list of beneficial owners, but they will not require to register with HMRC unless they have a tax liability.

Beneficial owners include Trustees and beneficiaries and the details kept include name, date of birth, National Insurance Number and nature of individual's relationship to the Trust. If the Trust has a class of beneficiaries who cannot be determined then a description of the class should be included.

If you have questions or require any assistance about whether the Trust Register is relevant to you, or how to set up and maintain a Trust Register, please contact us.

Charity Trustee Induction and Training

Charity Trustees have a statutory duty to act with care and diligence. OSCR recommend that, as a matter of good practice, new Trustees receive an induction and that the training needs of Trustees are identified and addressed.

In addition, charities above the audit threshold must report on the policies and procedures adopted for the induction and training of Trustees in their annual accounts.

If you do not have a process for inducting new Trustees and identifying the training needs of all the Trustees, this is something you should consider implementing now. Not only does it allow new Trustees to hit the ground running, undertaking regular training will allow Trustees to keep up-to-date with changes in the wider landscape, allow the Board of Trustees address skills gaps within the charity and will contribute to the charity's overall risk management.

Colin Liddell and Sarah Rennie are always happy to provide specific training for your charity, or training seminars in your area for your charity (whether on its own or in combination with other neighbouring charities). If you would like assistance in identifying your Charity Trustee's training needs or putting in place an induction process for new Charity Trustees we would be happy to help you.

OSCR Round-up 2017

1. Auditors & Independent Financial Examiners encouraged to be proactive in reporting charities to the regulator

OSCR together with the Charity Commission for England & Wales and The Charity Commission for Northern Ireland have produced a Guide for Auditors and Independent Financial Examiners with respect to reporting charities.

Auditors and Independent Examiners have a legal duty to report matters of 'material significance' to the charity regulator. The guidance sets out 9 reportable matters that the regulators consider materially significant including; failure in internal controls & governance, inadequately managed conflicts of interest and misapplication of charitable funds and provides useful examples.

Auditors & Independent Financial Examiners are also urged to report any other matters which may be relevant but do not fall within 1 of the 9 reportable matters with the mantra being 'when in doubt, report it'.

The guidance states that there is an expectation that an Auditor or Independent Financial Examiner will familiarise themselves with a charity's purposes and their governing document.

We strongly recommend that all Charity Trustees read the new guidance and consider each of the reportable matters in relation to their own charity, in

order to identify any matters that may apply to them and consider importing the 9 reportable matters into the charities annual risk assessment.

A link to the guidance can be found here:-

<https://www.oscr.org.uk/media/2606/20170331-matters-of-material-significance-guidance-v1-0.pdf>

Charity Trustees should also review their charity's activities against their charitable purposes, as contained in their governing document, now to ensure these align and are within the Charity Trustees powers to undertake. If your charity would like assistance with this Sarah Rennie would be happy to undertake a review of your activities against your purposes free of charge. Please e-mail Sarah with a copy of your governing document and list of your charity's current and intended future activities.

2. Fraud and Cybercrime

Thankfully, deliberate fraud does not occur often but when it does, it can sink a charity and leave Charity Trustees compromised or disgraced.

In addition, we now all require to be alert to cybercrime and be able to demonstrate that

The starting principle is that reasonable steps have been taken by the Board to protect the charity's assets, as it is the Board's responsibility to do so.

In short, charities should:-

1. develop an anti-fraud and cybercrime policy;
2. undertake a risk assessment for the charity; and
3. implement sufficient financial controls against fraud, for example, dual authorisation of internet banking transactions, and review the charities cyber security

A charity does not require to report to OSCAR in terms of the steps it has taken although if the charity were to become a victim of fraud or cybercrime, then they should inform OSCAR of a "Notifiable Event" and be able to show the existing steps it has taken in order to mitigate the fraud or cyber-attack occurring.

OSCAR have published a Fraud and Cybercrime Factsheet which provides tips on preventing fraud and cybercrime.

https://www.oscr.org.uk/media/2871/2017-09-06-v3_fraud-and-cybercrime-factsheet.pdf

If you would like any assistance in developing an anti-fraud and cybercrime policy and/or a risk assessment, please do let us know.

3. OSCR Video: Creating an effective Trustees' Annual Report

The Charity Trustees report forms an integral part of a charity's annual report and accounts and reports on the charities activities over the past year.

The preparation of the Trustees' Annual Report is responsibility of all of the Charity Trustees. If you are a Trustee - did you approve your charity's last Trustees Annual Report?

For charitable companies and SCIO's a charity's annual report and accounts can be easily accessed by anyone either via Companies House (for charitable companies) or the OSCR website for SCIO' s with an annual income of £25,000 an over. For all other charities, as charity accounts are public documents, anyone is entitled to request a copy from OSCR.

We find that for some charities the Trustees Annual Report is simply a cut-and-paste of the previous years, however, Charity Trustees should view the report not only as a legal requirement but also as a marketing opportunity to show-case to the public, funders, supporters and potential future funders and supporters its work and achievements over the past year.

OSCR have produced an excellent video 'How to create an effective Trustees' Annual Report' which can be accessed here providing practical guidance for Charity Trustees in preparing their Trustees Annual Report.

https://www.youtube.com/watch?time_continue=14&v=1gq7zfj9U5s

4. New Charity Registration Logo available for Scottish Charities



All Scottish Charities, by law, must publicise their charitable status on all communications and also on its website.

To make this easier, every registered charity in Scotland can now benefit from their own personalised standardised Scottish Charity Registration Logo.

Each individual charity's logo is available to download from the charity's online entry on the OSCR website (www.oscr.org.uk).

Charities wishing to adopt the logo should take note of OSCR's Registration Logo usage Guidelines – a link can be found here:

https://www.oscr.org.uk/media/2760/2017-06-26-oscr-registration-logo_usage-guidelines.pdf

5. Keep up-to-date with OSCR

If you have access to Facebook you can now 'like' the OSCR Facebook page to keep up-to-date with their latest blogs, guidance, publications and events.

Lobbying (Scotland) Act 2016

The Lobbying (Scotland) Act will come into full force on 12th March 2018 with the introduction of the Lobbying Register.

If your charity or organisation has 10 or more full time employees and engages in face-to-face communications (including video conferencing) with a Member of the Scottish Parliament (MSP), a Scottish Government Minister, a special adviser or a permanent secretary to the Scottish Government then this may be regulated and reportable under new Act, if it touches on certain topics including discussion about new legislation or changes to existing legislation in the Scottish Parliament, new or existing Scottish Government policies and decisions by the Scottish Government about contract, grants, financial assistance or licences.

Local politicians, ie. Councillors, are not covered by the Act nor are MSPs who work in the same geographic area as the charity or organisation. Scottish Government Ministers are still covered even if they work in the same geographic area.

The Act does not limit when or where lobbying can take place, which means that face-to-face communication can be very informal to include a conversation at a drinks reception or even in the street.

A record of all regulated discussions require to be reported by the charity or organisation at 6 monthly intervals together with other details including the name of the person lobbied and the date and location of the lobbying. The information will then be published on the publically accessible Lobbying Register.

There are some exceptions including where the communication is with a person who is not a paid representative of the charity or organisation. This means that conversations with Trustees (and other volunteers), as long as they are not paid, would not be require to be recorded. However, charities and organisations will need to ensure that staff are aware of the new requirements and if appropriate a lobbying policy should be introduced so that senior staff are aware of what circumstances a record should be kept and reported.

If you think the Lobbying (Scotland) Act 2016 might affect your organisation or charity and would like further guidance or for help in preparing a lobbying policy please contact us.

Museums and Galleries Tax Relief

The Museums and Galleries Exhibition tax relief gained Royal Assent on 16th November 2017 as part of the Finance (No.2) Act 2017.

Qualifying Museums and Galleries that are charitable companies can now claim a tax relief on the qualifying expenditure incurred in holding exhibitions, to include touring exhibitions.

Exhibitions and displays of objects, works and artefacts, which are considered to be of scientific, historic, cultural or artistic interest will qualify, so long as these are not organised in connection with a competition or one of the main purposes of the exhibition is to sell the items displayed.

Relief will apply at a rate of 20% for non-touring exhibitions and 25% for touring exhibitions and capped at £500,000 of the qualifying expenditure, being expenditure on the activities directly involved in producing the exhibition. Certain expenditure is expressly excluded including marketing.

The relief is currently available for expenditure backdated from 1st April 2017 to 31st March 2022. Claims require to be made by lodging a full Corporation Tax return, even if the company does not currently pay Corporation Tax, with HMRC.

Focus On:

Conflicts of Interest involving Charity Trustees - Measurement and Management

It is fundamental that Trustees must act in the interests of the Charity and cannot give priority to the interest(s) of another person or organisation. Inevitably, conflicts do arise. When they do, they have to be measured and managed.

Nature of Conflicts of Interest

Conflicts are either **direct** (involving the Charity Trustee personally) or **indirect** (involving a family or business connection to the Charity Trustee). A Charity Trustee must not take decisions which are best for the Charity Trustee personally, or for his or her friends, family or business connections.

Conflicts are either **real** (happening now), **potential** (in the offing) or **perceived** (remembering that perception can be as damaging to a charity's reputation as reality).

A charity should be aware of the seriousness of conflicts, whether **internal** in relation to the governance and operation of the charity, or whether **external** in respect of the reputational impact to its members, supporters, stakeholders, regulators and wider public.

Conflicts of Interest Policy

A charity should therefore have a clear and well-understood Conflicts of Interest Policy, which covers the points made below, and which is actually referred to, used and followed in practice.

Register of Conflicts of Interest

Some charities require its Charity Trustees to complete annually a Register of Conflicts of Interest, in which each declares those of his or her interests which are considered material to the charitable purposes and activities of the charity (and any trading subsidiary). Such a Register may also encompass members of Committees and senior staff. The Register can then be referred to as required by the charity's Chair, the Committee Convenors and the Executive Team.

Declaration at start of each meeting

Additionally, it is recommended good practice that, at the start of each Board and Committee meeting, a declaration is sought that no Trustee has any conflict of interest in relation to the business of the meeting. If such a declaration is made, it enables the Chair (or Committee Convenor) to consider the matter either at the outset of the meeting or otherwise immediately prior to the item of business in respect of which the interest has been declared.

Trustees' collective responsibility

A Board has a collective responsibility in all matters, including conflicts of interest. If therefore there is a view by other Trustees that another Trustee has a real, potential or perceived conflict of interest, which the conflicted Trustee does not declare, there is a duty upon the other Trustee(s) to question whether a conflict should be declared.

Measurement and management of Conflict of Interest

Once a conflict has been declared by the conflicted Trustee, or is discovered during the governance process, or its existence is highlighted by other(s), the process usually involves measuring the conflict of interest and managing the conflict of interest.

More Advice Needed?

There are a number of Factsheets on our website at www.jandhmitchell.com. These are regularly updated and we hope you find them useful.

Please do not hesitate to e-mail Colin Liddell or Sarah Rennie for any assistance which you or your charity may need to colin.liddell@hmitchell.co.uk or sarah.rennie@hmitchell.co.uk. We would be pleased to hear from you.

Although carefully prepared, this Fact Sheet is intended as a guide only in relation to issues relevant to Charities in Scotland.

Specific and specialist legal advice should be sought on individual situations, including the precise content of any charitable constitution, Board Policies, Declarations of Interests, etc.

December 2017

If you no longer wish to receive our Newsletter in future please let us know and we would remove you from our mailing list. If, in doing so, you are aware of someone else from the same charity or community organisation who would like to receive our Newsletter in future, please check with them and, if appropriate, provide us at the same time with their e-mail address.

If you wish to add any one or any charities with which you are involved to our mailing list, please let us know. Thank you.