



Charity Newsletter 2018

We are delighted to issue our Annual Charity Newsletter 2018. If you would like more detailed information on its content or any other matters please contact any member of our Charities & Communities Team.

Charity Seminar 2019

We are looking forward to hosting our next open Charity Trustees' Toolbox Seminar in Perth in Spring next year. We will contact those on our mailing list once a date has been confirmed.

This time we are looking to know be joined by a Charity Accountant who will present a session on charity finance and accounts, a subject about which many of you have said you would like to more. As usual if there are any other particular topics you would like to see covered, please do send us your suggestions. If you are not on our mailing list and would like to be added please do let us know.

NEW SCOTTISH GOVERNANCE CODE

The new Scottish Governance Code is set to be published in mid-November 2018. The Code sets out the core principles and key elements of good governance for the boards of charities, voluntary organisations and social enterprises throughout Scotland.

The Code has been developed by Scotland's Third Sector Governance Forum by reference to a range of other developed Governance Codes, including the Charity Governance Code in England & Wales – which has long been recognised as a the 'go to' Governance Code for Charities throughout the UK.

The Scottish Governance Code sets out 5 core principles of good governance for Charity Trustees with guidance of how these can be achieved. The 5 core principles being:

- organisational purpose
- leadership
- Board behaviour
- control
- effectiveness

The purpose of the Code is to encourage third sector organisations to look at and improve their governance. How individual charities will apply the principles will very much depend on its size, organisational structure and complexity. We encourage Charities to take the time to review the Code, once it is available, with the intention of adopting the Code going forward.

Unlike other charity governance codes, there is no direct reference either to knowing your own roles and responsibilities as trustees, or to achieving Board diversity, although both of these could perhaps be inferred in 'Board behaviour'.



When did you last review your Charity's Constitution?

Understanding your charity's governing document and ensuring it continues to be relevant is extremely important. A charity's constitution sets out the rules that bind the Charity Trustees in managing the charity.

Upon reading the constitution, you may find that the provisions it is bound by do not reflect the way in which you manage your charity, for example;

- you might discover that the quorum (i.e. the minimum number of individuals) needed to hold a meeting is not followed and / or is not workable in practice; or
- you might hold trustee meetings by electronic means (such as Skype or conference calls), but have no explicit right to do so in your constitution.

It is good practice for Charity Trustees to review the constitution at least every couple of years to ensure, in particular, that the activities of the charity continue to align with its Charitable Purposes as set out. It is not unheard of for a charity to evolve in terms of its activities and governance procedures and sometimes leave the constitution behind!

Indeed, OSCR now asks in its Annual Return form; 'When did the charity trustees last look at and consider the content of the charity's governing document?' as part of their move towards targeted regulation.

If you are not following the terms of your governing document, then you either need to change your constitution or to amend your practices. Bear in mind that any changes carried out must comply with the Charities and Trustee Investment (Scotland) Act 2005 and any other legislation applicable to your charity such as the Companies Act 2006 (if also a company), the Land Reform (Scotland) Act 2016 (if a Community Body) or the Co-operative and Community Benefit Societies Act 2014 (if a Registered Society) You will also need to check have the power in your constitution to make changes and follow the procedure in our governing document for doing so.

You should also ensure that your governing document complies with current good practice. If you need to make changes or are not sure and need some advice please do please let us know and we can help you through this process.

SCIO NAMES APPEAR ON INDEX OF UK COMPANIES

From 1 January 2018, Scottish Charitable Incorporated Organisations (SCIOs) appear in the Companies House Registrar's Index of Company Names. SCIO names will now appear in the list of the names of companies when users search on Companies House WebCheck, thus allowing SCIO names to be protected.

Gift Aid Changes 2019

On 1st April 2019 the rules around claiming Gift Aid will change.

Currently a charity cannot claim Gift Aid on a donation where the donor receives a benefit in return, unless the benefit is significantly less than the donation.

At present:

1. for donations of up to £100, the benefit can be worth up to 25% of the donation;
2. for donations of between £100 and £1,000, the benefit value is capped at £25; and
3. for donations of more than £1,000, the benefit can be up to 5% of the donation, up to a maximum benefit of £2,500.

From 1st April 2019, the benefit threshold for the first £100 of a donation will remain at 25%, but for all larger donations, charities can provide 25% of the first £100 plus 5% of the rest. The maximum threshold will remain at £2,500 of benefit.

In addition the Gift Aid Small Donations Scheme will increase its limit from £20 to £30 to align with the current contactless payment limit.

If you are involved with a new charity, remember that you can only claim Gift Aid once you have registered your charity separately with HMRC for tax relief.

Minimum Wage

From April 2019 the National Living Wage will be increased to £8.21 per hour for those aged 25 and over working in the UK.

Is Brexit a Risk for your charity?

At the time of writing the UK is set to begin its exit from the UK at 11pm on 29th March 2019 with the intention that everything will be concluded by 20th December 2020. Whilst there are many unknowns, charities should consider now how Brexit may affect them in relation to what they do already know. Charities which currently benefit from and rely on EU funding will need to ascertain what will happen to that funding and take steps to mitigate any potential adverse impact there may be should that funding be lost.

Electing Trustees and finding the right skills

It is becoming increasingly important for a charity to have the requisite skills in the Board of Trustees relevant to the charity. We advise charity boards to at least annually complete a skills matrix so they can identify any skills gaps and training needs within the board. Undertaking this process can lead to a more focussed recruitment that has a direct relationship to the needs of the charity.

We are often asked by charities whose members elect the Trustees how they can best achieve a balance between focused trustee recruitment and democracy. This is where it is important for an elected board to have the ability to co-opt, say, up to 2 trustees which do not have to be members, in order to recruit certain skills and experience on to the board. Of course, the Trustees need to have the power of co-option in the first place in terms of the constitution, if you are unsure whether your constitution allows you to co-opt please let us have a look and we will happily advise you.

Charity Trustee Induction

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.

Charity Trustee Training

It is more important than ever that Charity Trustees and managers ensure that they understand their legal responsibilities and are aware of and follow best practice.

Our charity team provides training regularly throughout Scotland to Charity Trustees, charity managers and other professionals, on a variety of topics, but mainly relating to the governance, day-to-day running of charities and relevant aspects of Charity Law and practice.

Whether it is to help new or existing Charity Trustees understand their legal duties or to provide specific training in relation to the relationship between the chair and chief executive, we will always work with charities to understand their training needs so as to ensure that our sessions are relevant, specific to the charity, and deliver the maximum benefit.

If your charity, or charities in your area could benefit from a Trustee Training Session contact us to discuss your requirements.

Safeguarding

It was hard to avoid the press coverage earlier this year in connection with the Oxfam scandal and the impact that this has had to public confidence in the charity sector, which has been well documented. All Charity Trustees must be aware of their duty to safeguard vulnerable beneficiaries from harm, harassment, bullying or abuse.

In May 2018, OSCR published **Interim Safeguarding Guidance** for Charity Trustees which covers Trustees Duties, what to consider when preparing a Safeguarding Policy and guidance on safe recruiting. In addition, the OSCR Annual Return Form has also been updated with questions specially relating to Safeguarding for charities with an income over £25,000.

Where a problem does arise, whether in relation to safeguarding or not, Charity Trustees are reminded that they should consider to what extent this should be reported to OSCR in terms of their Notifiable Events regime (for more information on Notifiable Events please see the Fact Sheet on the Charities and Community Page of our website).

If you require assistance, such as the preparation of a Safeguarding Policy specifically for your charity please contact us.



Our Charities and Communities Team



Colin Liddell was the first solicitor in Scotland to be accredited as a specialist in Charity Law and is regarded as an expert in his field. Colin is also the author of two chapters of 'A Practical Guide to Charity Law in Scotland' published by W. Green (ISBN13: 9780414032569). Colin is Chair of Pitlochry Festival Theatre, and a Trustee of a number of other charities including Royal High School Preservation Trust and Dunard Fund.

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Sarah Brown has a significant portfolio of charity clients and community organisations throughout Scotland and provides advice and assistance on a wide range of topics. Sarah has particular expertise in helping charities change their legal structure and undertaking charity reorganisation schemes. Sarah is a Trustee of GrowBiz, Birnam Arts and the Pettigrew Charitable Trust.

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Jenny Temblett brings a wealth of experience in Business Law having previously practised at an international law firm, and is a great asset to our charity team. Jenny assists with a wide range of charity and connected legal matters.

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More Advice Needed?

There are a number of Factsheets on our website at www.jandhmittchell.com. These are regularly updated and we hope you find them useful. Please do not hesitate to e-mail Colin Liddell or Sarah Brown for any assistance which you or your charity may need.

Although carefully prepared, this Newsletter 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.

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