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Charity Commission makes changes to annual returns

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The annual return represents the Charity Commission's main point of contact with the vast majority of registered charities in a given year. It is the regulator's principal means of gathering data from charities. It is also a means for the Charity Commission to get *'more with less'* by requiring the disclosure of certain information from charities to review, in a form which can be easily analysed (unlike for example, the annual report).

The Charity Commission has introduced a number of new and revised questions in the 2018 Annual Return including trustee payments, overseas income and expenditure, professional fundraising and safeguarding – risks the Charity Commission is currently focusing on. All charities and trustees should be aware of these new questions, the underlying concerns they go to, and any changes to record-keeping practice they will require.

Most significant changes made to the Annual Return

In September the Charity Commission published a consultation proposing significant changes to the charity annual return. The relevant regulations were enacted on 20 December and took effect from 1 January 2018 and the new digital annual return service is expected to be available in the coming months.

The consultation included controversial suggestions made in the Summer of 2017 by Amber Rudd, as Home Secretary, that charities should be forced to disclose overseas income as a means of countering terrorist financing. The final Regulations make some minor concessions from Amber Rudd's original suggestions regarding disclosure of overseas income but still create a considerable new administrative burden in terms of the information some charities will have to track and record (although this information will not be made public).

Questions 11-13 of the Annual Return will require all charities to report from which overseas countries they received income and, for each country, the total value of that income received from overseas governments, quasi-government bodies, Non-Profit Organisations or unknown sources. These questions will be effective immediately for returns on periods ending after 1 January 2018 (on the basis that, according to the Charity Commission, this is information '*that relevant charities should already record and hold*').

Question 29(a) will require all charities with a gross annual income of £25,000 or less to report the value of individual payments from individual donors or institutions outside the UK (other than those caught by Question 13), subject to an anticipated threshold still to be reported. Question 29(b) will require all charities with an income of more than £25,000 to give the total value of all of the individual payments from individual donors or institutions outside the UK (other than those caught by Question 13), subject to a separate anticipated threshold. Both of these Questions 29(a) and (b) are subject to transitional provisions so that they are optional for all returns on periods ending before 1 January 2019, and mandatory thereafter.

Question 30 poses additional questions regarding how overseas expenditure is incurred. The charity must identify if money has been transferred overseas outside of the regulated banking system and, if so, how much by certain specified means and subject to what controls and risk management. This question is also optional for all returns on periods ending before 1 January 2019, and mandatory thereafter.

A new Question 21 asks if any employees have received total employee benefits over £60,000 and Question 22 then asks how many employees fall into various bands set for employee benefits exceeding £60,000 (the answers to which will be made public on the register). The original proposals only mentioned employee salaries, and guidance on the total employee benefits definition is expected to follow. There will also be a requirement under Question 23 to state the value of the total employee benefits of the highest paid employee (however this will not be made public).

There is a new Question 26 on safeguarding asking whether DBS checks have been obtained for those eligible (to the extent that the charity is not regulated by another regulator on these issues) where a charity works with *'children and vulnerable adults'.*

There is a new Question 18 requesting confirmation of any payments made to trustees, including, at Question 19, non-cash benefits and payments for providing professional advice, and a new Question 20, asking whether any trustee has resigned and then taken up employment with the charity. However, these questions do not request disclosure of the value of such payments and benefits.

Question 4 on fundraising now asks whether the charity works and has written agreements with any professional fundraisers (in addition to commercial participators).

Question 7 on government income has been designed to better identify those solely reliant on single source government funding by asking for the value and number of all government contracts and grants in the year (this information will also be published).

There are new Questions 16 and 17 explicitly asking (and publishing on the Charity Commission website) how many trustees are also directors of charity subsidiary/ies. We suspect that this is an attempt to proactively identify and ensure the management of conflicts of interests/loyalty.

Following responses to the consultation the return will no longer ask if a charity gets rate relief on charity premises or how much it claims in Gift Aid.

The reforms purport to allow greater proportionality and ease, for smaller charities in particular, with the Charity Commission claiming that *'on average, charities completing the annual return will answer 15 fewer questions than in the past'.*

While this may be true charities should note that the previous questions on volunteers, internal policies, property ownership, recognition, gift aid and other regulators have been moved from the Annual Return to form part of an ongoing obligation to update the Charity Commission. Therefore charities will now need to update the Charity Commission as and when changes occur, rather than by using the annual return as a 'snapshot' for a given year. This could be particularly onerous for example in updating the 'number of volunteers' on a rolling basis, especially for a large operational charity.

Why was the Annual Return revised?

While the changes are couched in the language of making the Annual Return easier for trustees it may also be an attempt to make regulation easier for the Commission. The data from these questions identifies certain risk factors that the Commission could act pre-emptively to resolve before they develop further. Its full report on the consultation notes that it will use the return to identify *'charities with certain characteristics that indicate a risk so that we can send information about appropriate regulatory advice and guidance, send alerts, issue warnings or invite to outreach events.'*

Because the data collected through the annual return is entered directly into the Charity Commission's digital portal there is scope for certain responses triggering automatic red flags leading to further investigation. For example, the final report notes, in relation to professional fundraising, that '*in future our systems will enable us to identify … charities and to trigger either direct communication to the charity with alerts and guidance, or to refer charities to our operational teams for further consideration'* – say if a charity answered 'yes' to using a professional fundraiser but 'no' to having the written agreement required by law in place.

The revised annual return and the original consultation therefore offer insights regarding the Charity Commission's priorities going into 2018 – what risks exactly it is trying to pick up. We would suggest that these include:

Extremism, safeguarding and fraud: William Shawcross, the outgoing Chair of the Charity Commission, noted in his recent farewell speech the three priorities he agreed for the regulator upon taking office in 2012: *'to stop fraud in charities, to protect vulnerable beneficiaries such as children and old people in charitable care, and to protect all charities from abuse by extremists'.* The new annual return shows a continuation of those priorities.

The new questions regarding overseas income were explicitly announced by government as a means to identify and combat terrorist financing and the exploitation of charities by overseas extremists. The new questions regarding DBS checks illustrate the Commission's continuing desire to promote safeguarding, tying in with its recently updated safeguarding strategy. Finally, we note that the initial proposal in the annual return for charities to publish the value of gift aid claimed, possibly as a legacy of the Cup Trust scandal, which has since been rejected in favour of greater cooperation with HMRC.

Executive Remuneration: David Holdsworth made particular mention of the new questions regarding executive remuneration in his press release accompanying the new Regulations. In his words, *'the public care deeply about transparency in this area'* and the publication of the number of employees within each remuneration band seeks to achieve this.

Conflicts: The failure of charities to manage conflicts is a perennial concern for the Charity Commission and evidence of poor governance. Its CC29 guidance notes *'The Commission sees too many cases of unidentified or poorly handled conflicts of interest, many of which could have been prevented by better trustee awareness and stronger systems'.* The new questions regarding trading subsidiaries and trustee benefits are designed to illuminate possible situations with conflict and so allow further advice and investigation regarding how they should be managed.

Fundraising: Fundraising remains a key regulatory concern for the Charity Commission following the scandal over the death of Olive Cooke in 2015 and subsequent ICO investigations into charity fundraising practices. The extension of the existing question on fundraising to include professional fundraisers reflects this focus and looks to identify any charity using professional fundraisers informally, for further consideration and so that a proper written agreement can be put in place. We note that the Charity Commission will share this data pursuant to its Memorandum of Understanding with the Fundraising Regulator.

Financial resilience: Following the collapse of Kids Company in 2015 the Charity Commission has become increasingly wary of any indication that a charity is in financial difficulty. We note, in this respect, the revamped guidance on Charity Finances: Trustee Essentials published in 2017 and the regulator's encouragement to auditors to report issues regarding larger charities. The annual return already helps identify charities in financial distress by the requirement for larger charities to include financial details from their accounts; as a further precaution, the updated questions on government income now seek to identify 'reliance on single or primary source public funding' as a possible risk factor.

How should charities prepare for the new Annual Return?

For charities whose new financial years have just begun, or will do so in March or April, their response to the new annual return requirements may be a case of 'fail to prepare, prepare to fail'.

If you would like further guidance on the new Annual Return questions please do make contact with a member of our team.

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