



# NEWS

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## Good governance in difficult times

### Introduction by Dame Suzi Leather

This year's news has highlighted the importance of effective governance across all sectors as never before. Uncertainty about the economic future is concerning all of us. For the charity sector, the impact of an economic downturn means charities need to think carefully about how to maintain sustainability and public support at this difficult time.

This issue has details of how the Financial Services Compensation Scheme works for charities and some important advice for charities about reviewing risks and their financial position.

As the article into levels of public trust and confidence in charities shows, the public trusts charities highly but expects information and accountability in return. So, as well as covering some of the main provisions of the Charities Act which came into force this year, this issue will also cover some key aspects of governance for trustees to consider, helping them to ensure that their charities are in the best shape possible for the times ahead.

There are also new publications to help charities, including our first-ever annual report into our compliance, monitoring and

investigation work. Hopefully other trustees will be able to use it to ensure their own systems are more robust than those of the case studies featured in the report.

Charities have a long history of being at the forefront of helping society through its social and financial challenges. I hope this issue of our newsletter provides some useful suggestions for helping you face the challenges ahead.

*Suzi Leather*

Dame Suzi Leather, Chair

[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

# Our strategy in action

## Looking ahead to public benefit reporting

We published our general guidance on public benefit for trustees at the start of the year, and the January edition of this newsletter provided a summary guide. Since then, we've published draft supplementary guidance for consultation for charities which advance religion or education, those relieving poverty, and those which charge fees.

Summaries of the responses to these consultations are available on our website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) under 'Public benefit guidance'. We'd like to thank the hundreds of charities and individuals who took the time to let us have their views – they have been enormously helpful.

We'll be publishing final versions of supplementary public benefit guidance for these types of charities by the end of 2008.

Further draft guidance covering the principles of public benefit for charities which advance an ethical or moral belief system is currently out for consultation until 5 January 2009. Again, this draft guidance is available from our website under 'Public benefit guidance.'

### Next steps

Charities with a financial end of year of March 31 will be the first to report on their public benefit from April 2008 onwards. Those of

you already reporting your aims and activities well should find public benefit reporting a relatively straightforward exercise, but since the end of October, we have begun to publish a bank of online examples to help.

This 'examples bank' will conclude with examples for fee-chargers and educational charities in advance of the first charities reporting from next March. While the examples are fictitious, we'll add real-life examples of good practice public benefit reporting as we receive them.

## Public trust in charities on the up

Good news for charities – according to a survey we commissioned from Ipsos MORI public trust and confidence in charities has increased over the last three years. Our survey, published this May, showed overall public trust and confidence – measured as mean score out of 10, has increased from 6.3 in 2005 to 6.6 in 2008. Slightly over a third of those surveyed gave charities a trust rating of eight or more out of ten.

But charities can't afford to be complacent. There was near-total agreement about the need for charities to be accountable, with 96% of respondents saying it was important to them that charities provide public information on how they spend their money. In fact, not knowing how a charity spends its money is the top factor making people less likely to trust charities.

So making sure you file your accounts and returns with us isn't just a legal requirement – it makes a difference to public trust in your charity.

# New Register goes live

To help meet these growing expectations for publicly available information about charities, we launched the new look Register of charities last month.

For the first time, the Register now provides a financial summary, in diagrammatic form, for all charities with incomes over half a million, taken from the information

provided in the Annual Return – an example is shown below.

The new Register will provide a wider range of information allowing even non-technical audiences an insight into a charity's financial resources and how they are used.

Because we use the information given to us in the Annual Return it's

important the information you give us about your finances and activities is accurate. Whilst we can correct these inaccuracies this takes time and viewers - including potential funders and supporters - may be misled. Please do make sure you send us the right information, right on time.



## Removing defunct charities from the Register

In the last year, a quarter of charities on the Register filed their accounts and returns late and 9,000 charities with a previously known income of over £10,000 haven't submitted an Annual Return or accounts for the last financial year.

Many of those charities which fail to file these documents have simply ceased to exist but their trustees haven't told us. The Commission has a statutory responsibility to ensure that the Register of charities is accurate so we've introduced new

measures to ensure charities which no longer operate are removed.

If a charity fails to send its documents in on time we notify the organisation that it's in default. Four months later we now send a second default notice explaining that if due documents are not submitted we will treat it as an indication that the charity has ceased to exist or operate.

If, after a further four months, accounts or a return have not been

submitted, we notify the charity that it may be removed from the Register if the overdue documents are not submitted within four months. If the documents haven't been sent a full year after the original deadline the charity may be removed from the Register or action taken to protect its assets.

If you need help or advice on accounting or reporting obligations please contact us at **Charity Commission Direct**, PO Box 1227, Liverpool L69 3UG, tel 0845 300 0218.

# Under scrutiny – getting accounts sign-off right

The rules for audit or independent examination have changed. Trustees need to know their options when choosing the right one to scrutinise the charity's accounts before filing them with us.

## For smaller charities

For charities with gross income of between £10,000 and £500,000 an independent examination is the minimum level of scrutiny required. New independent examination arrangements have come into force for financial years starting on or after 1 April 2008 and, for the first time, these also include charitable companies – charities also registered with Companies House.

## For larger charities

For larger charities an audit is required. For financial years starting on or after April 2008, charities will require an audit if their:

- gross income exceeds £500,000; or
- total assets (before liabilities) exceed £2.8 million and gross income exceeds £100,000.

## Advice for trustees

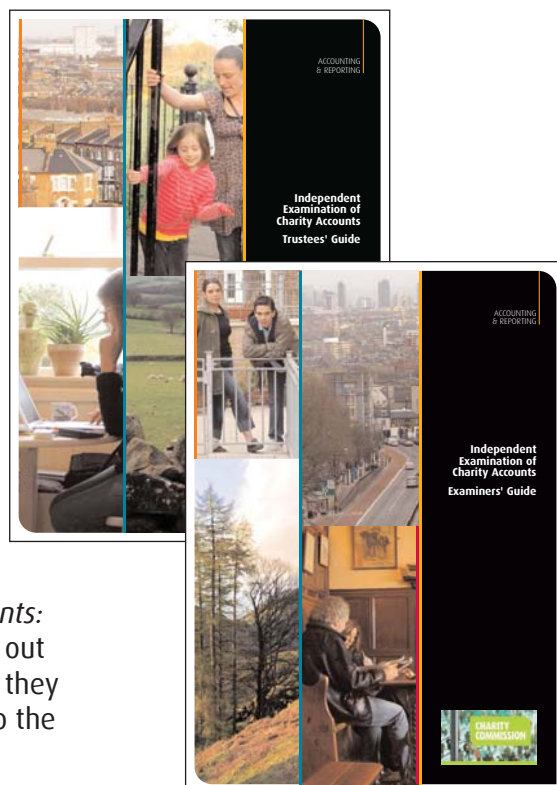
Our new guidance, *The Independent Examination of Charity Accounts: Trustees' Guide* (CC31) explains what trustees need to know about independent examination, how to select your independent examiner and a summary of what an independent examination covers. It's available from our website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) under 'Publications'.

Before opting for independent examination, trustees should check their charity's income and assets are below the statutory audit threshold, that the charity's governing document doesn't require an audit, and that no funder requires an audit as a condition of funding.

## Advice for examiners

We also provide guidance for examiners; *Independent Examination of Charity Accounts: Examiners' Guide* (CC32) sets out what they must do and what they must include in their report to the

charity's trustees. It also explains their new duty to report matters of material significance to us, gives example reports and provides a separate section for charities also registered in Scotland with the Office of the Scottish Charity Regulator (OSCR). This guidance is essential reading for examiners, and trustees are encouraged to check their examiner is familiar with this guidance before appointing them.



## Countdown to the CIO

This September saw the launch of a consultation to finalise some key details of the forthcoming new Charitable Incorporated Organisation (CIO) framework for charities.

These include the additional rules needed to create an effective operating structure – both to enable trustees to run the charity and to achieve its objectives. And, given the CIO is a new structure, these rules also need to give those working with the CIO, funders and suppliers for example, the confidence that it's a robust organisation with which they can

do business. The proposals aim to balance the need for CIOs to be simple and attractive to charities with the need for the legal framework to be robust for business purposes. The final structure is unlikely to be as simple as many in the sector originally believed. Any charity which is considering whether it should convert to the new form should think about the costs and benefits when deciding if it's appropriate for them or not.

Given its nature, the consultation is asking questions of a highly technical nature, but it also aims

to answer key questions around setting up as a CIO or converting from an existing charity.

The CIO consultation runs until 10 December 2008. It can be viewed either on our website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) or that of the Office of the Third Sector at [www.cabinetoffice.gov.uk/thirdsector](http://www.cabinetoffice.gov.uk/thirdsector). It's anticipated the final CIO structure will be available during 2009.

## Clarity for charity complaints

The 2,000 or so complaints we receive about charities each year are wide-ranging, but our remit means we can only look into some types of issues. This June we published revised guidance, *Complaints about charities (CC47)*, which explains what we can, and can't, look into as well as signposting to other organisations which may be able to help with those complaints we can't pursue.

It makes clear we will take up complaints where we decide there's a serious risk of harm to, or abuse of, a charity, its assets, beneficiaries or reputation and we believe that our intervention is needed to protect them.

The issues we consider serious include:

- significant financial loss to a charity;
- serious harm to beneficiaries, particularly vulnerable beneficiaries;
- sham charities;
- threats to national security, particularly terrorism; and
- deliberate use of a charity for private gain.

Many of the complaints we receive relate to charity services or other areas of a charity's work. We recommend all charities have a complaints procedure which is well-publicised and which all staff are aware of. After all, an important part of charity's accountability is about their accountability to beneficiaries. To find out more about implementing a complaints procedure see our research report, *Cause for Complaint? How charities manage complaints about their services (RS11)* available from our website under 'Publications'.

When we receive complaints about fundraising methods, we pass these to the Fundraising Standards Board (FRSB). This organisation is at the forefront of self-regulation for fundraisers and FRSB members agree to follow best practice. In return, they can display the FRSB 'tick' logo.

## The damage disputes can do

Internal disputes between different factions in a charity can be one of the most potentially damaging situations any charity can face. Again, we often receive complaints about these with expectations that we will take one 'side' or another but it's only rarely that we can become involved.

Disputes need to be resolved before they escalate, and trustees need to remember it's their role to act

in the best interests of the charity and its beneficiaries at all times. We have published advice for trustees in this position, *Conflicts in your charity*, which explains the responsibilities trustees have in this situation, and which is available from our website under 'Meeting our Requirements'.



# Taking stock in difficult times

As we go to print, charity umbrella organisations are reporting significant losses to the investments and incomes of some of their members. Many trustees are understandably uncertain about what financial decisions to make. We hope this section of the newsletter provides useful information and advice for trustees as they work towards reinforcing their charities' economic sustainability. Keep checking our website regularly for updates on the financial position for charities as they develop.

## Financial Services Compensation Scheme

We know many charities are not sure whether they are eligible to claim compensation for the loss of their savings and deposits should their bank or building society fail. The Financial Services Compensation Scheme (FSCS) ([www.fscs.org.uk](http://www.fscs.org.uk)) covers business conducted by firms such as banks and building societies authorised by the Financial Services Authority (FSA).

The FSCS can pay compensation to consumers if an authorised firm is unable, or likely to be unable, to pay claims against it. The rules for the FSCS are made by the FSA ([www.fsa.gov.uk](http://www.fsa.gov.uk)) and they set out which types of claims can be considered. The compensation limit for deposits has now increased to £50,000.

### Can charities apply for compensation under the Scheme?

The information provided by the FSCS about the Scheme does not

specifically mention charities. However, it appears that charities are covered by the Scheme to the same extent as other organisations and individuals.

The FSA Handbook of rules and guidance sets out which claims will **not** be eligible for compensation. Many charities should be eligible to claim compensation but there appear to be a number of important exceptions. In the Commission's view, the exceptions that are most likely to include charities are:

- a company which has two or more of the following:
  - more than £6.5 million turnover;
  - more than £3.26 million balance sheet total;
  - more than 50 employees
- an unincorporated association which has assets of more than £1.4 million;
- collective investment funds (these would include common investment funds).

A number of charities have written to the Chancellor of the Exchequer asking that compensation limits be raised for charities. Keep up to date on developments by visiting the FSCS website regularly.

If charities want more information about the FSCS, or wish to submit a claim, they should contact the FSCS directly at:

**Website:** [www.fscs.org.uk](http://www.fscs.org.uk)

**Tel:** 020 7892 7300  
(Customer Service Team)

**Email:** [enquiries@fscs.org.uk](mailto:enquiries@fscs.org.uk)  
(enquirers should include their full name and address in the email)

**Post:** Financial Services  
Compensation Scheme  
7th floor, Lloyds Chambers  
Portsoken Street  
London E1 8BN

## Could a trustee be personally liable for any loss of funds?

In administering the property of a charity, a trustee must use the same kind of diligence and care in the execution of his or her office that a person of ordinary prudence would use in the management of their own affairs. Providing the trustees have done so, they are unlikely to be at risk. Additionally, the courts are likely to make allowances

where trustees are not investment professionals and are not paid.

When exercising any power of investment, trustees must follow standard investment criteria on the suitability and diversification of investments. They must also review the investments from time to time, and take proper advice

when investing or reviewing those investments.

For more details on the investment of charitable funds please see our guidance *Investment of Charitable Funds: Basic Principles* (CC14) available from our website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) under 'Publications'.

## Review your risks

Some things are outside any trustee's control but reviewing the risks to which the charity is exposed is the first stage in putting steps in place to minimise or manage them. Different charities will have

different levels, and types, of risk. For more information on how to analyse your risks and review your management of them see the following guidance available from our website, *Charities and Insurance*

(CC49) and *Internal Financial Controls for Charities* (CC8) under 'Publications' and *Charities and Risk Management* under 'Guidance'.

## The reality of reserves

If your charity's income, from whatever source, is significantly reduced you may inevitably have to review your reserve levels and amend your reserves policy. The more extreme your loss the more urgent the need to do this and take additional steps based on your

findings. Additionally, being able to explain your reserves policy to funders may help reassure them that you're a robust organisation which takes sustainability of your services to beneficiaries seriously. If your charity still doesn't have a reserves policy, or you need to refresh

your knowledge of the processes involved, visit our website at [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) and look up *Charities' Reserves* (CC19) under 'Publications' to help you develop one.

## Maximising fundraising success

A recent nfpSynergy survey indicated that online fundraising was doing disproportionately well as a fundraising method. If you don't already engage in this type of fundraising maybe it's something to consider – perhaps working with similar charities to spread the costs, or seeing if a local IT company will help for free.

And, when every penny spent may prove harder to replace, ensure

your thinking behind any new fundraising venture is thoroughly researched and costed. This may not be the time to go out on a limb for its own sake.

Every penny clearly counts, but many charities may still be unaware that they can claim up to an extra 28 pence for every £1 given, as long as the donor is paying basic rate income tax. Organisations can even backdate

their claim by several years – in some circumstances even if they weren't registered charities at the time. Charities reclaimed over £830 million in Gift Aid in 2007; if yours isn't making use of the scheme visit [www.hmrc.gov.uk](http://www.hmrc.gov.uk) to find out more.

## The scope for doing deals

There are other ways that charities can save money, by reviewing what they do and how they do it. If, for example, you've always relied on the same suppliers now might be the time to see if there's a deal to be done or to put your supply contract out to wider tender. Similarly, with more and more commercial property unlet and available there could be mileage in re-negotiating the lease terms of your premises. Looking at what you pay for, and how you pay for it, may provide opportunities for cash savings, added value or both.



# Good governance in action

With public demands on charities growing, as well as public expectations of charities' effectiveness and transparency, having good governance systems in place is becoming increasingly important. Charities can't afford to be complacent, particularly at a time when people's disposable incomes are being stretched and demands for charities' services such as debt advice are growing. Prevention is always better than cure and there are some aspects of good governance which may be particularly relevant to trustees currently.

## Protecting personal data



Security of personal data is an issue of growing importance for public trust and confidence in organisations. A survey earlier this year, for example, showed that only 10% of us trust government with our personal data.

But other sectors have no room for complacency. Just because there hasn't been a major voluntary sector data-loss scandal yet doesn't mean the same risks don't apply. Whether it's the financial records of supporters or more sensitive records of beneficiaries, charities need to proactively ensure the security of this information.

And outsourcing to the data management professionals doesn't get a charity off the hook if something goes wrong – the legal responsibility, and liability, for what they do with that information remains yours.

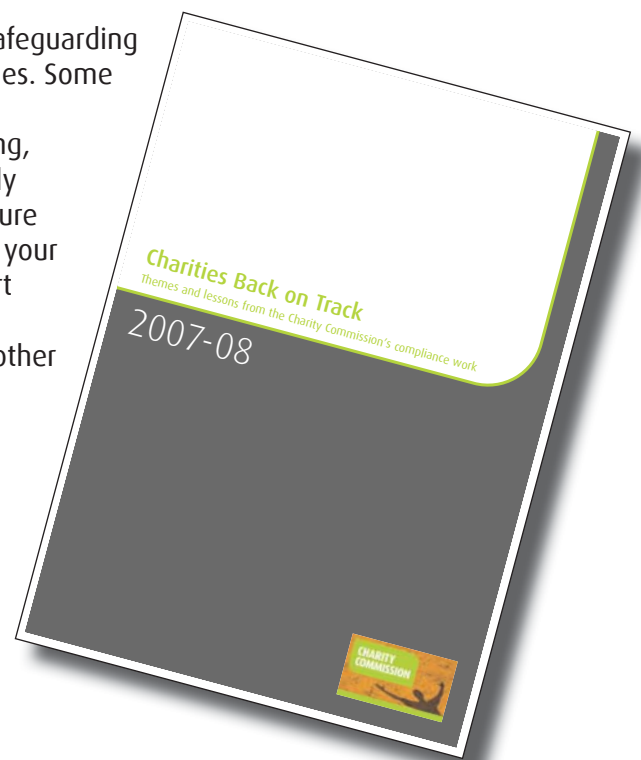
Trustees need to recognise that handling the data of donors and beneficiaries is a risk like any other. For common-sense advice on how to manage it see the good practice notes on the Information Commissioner's Office website at [www.ico.gov.uk](http://www.ico.gov.uk)

## Staying on the rails

Whether you have the resources to aim for best practice or not, there are some aspects of effective governance which really aren't optional. In September we published our first-ever report into our compliance work – monitoring, investigations and resolving serious problems in charities. *Charities Back on Track*, available from our website, shows just how bad things can get if the building blocks of governance aren't in place.

Featuring real-life case studies it provides step-by-step advice on a range of themes including fundraising contracts, internal

fraud, disputes and safeguarding vulnerable beneficiaries. Some of these case studies make alarming reading, but they've all actually happened. To make sure they don't happen to your charity read the report and benefit from the hard-won lessons of other organisations.



## Volunteers – a long-term resource

Volunteers don't charge but they certainly aren't free. Recruiting, training and supervision all demand valuable resources. Investing in your volunteers to make sure they are happy, useful and stay with you for the long term makes a lot of financial sense but, according to a survey this year by the Institute for Volunteering Research, around 35% of organisations said they encountered some difficulty in keeping volunteers.

Most charities now know they need a structured approach to

recruiting and inducting new trustees if they're to get the right people and keep them. In the same vein, ensuring you look after your volunteers and address their needs as well as those of the charity is likely to keep them with you for longer. There is plenty of free advice out there for boards seeking to implement effective volunteer management practices.

Volunteering England's website, for example, has a downloadable guide, *A choice blend – what volunteers want from organisation*

*and management* which outlines what organisations can do to turn a 'doubter' into a 'starter', a 'starter' into a 'doer' and a 'doer' into a 'stayer'. The guide is available from Volunteering England's website at [www.volunteering.org.uk](http://www.volunteering.org.uk) and many other organisations such as the National Council for Voluntary Organisations also provide online guidance on volunteer management.

## The cost of conflicts of interest

Any suggestion that trustees are misusing their position in a charity for personal gain can be incredibly damaging. Funders may think twice about what they're funding and the charity's reputation can take a

real knock. In real life, the potential for conflicts of interest in charities are fairly common, and mistakes are most often made through a lack of awareness. What matters in terms of good governance is having

procedures in place which recognise the potential for these conflicts of interest to occur and set out how they are to be managed. Some common potential conflicts involve:

Direct financial gain or benefit to the trustee, such as:

- payment to a trustee for services provided to the charity;
- awarding a contract to an organisation in which a trustee has an interest and from which they'll receive a financial benefit; or
- employing a trustee in a separate, paid post within the charity, even if the trustee has resigned as a trustee in order to take up the employment.

Indirect financial gain, such as employment by the charity of a trustee's spouse or partner, where their finances are interdependent.

Non-financial gain, such as when a user of the charity's services is also a trustee.

Conflict of loyalties, such as where a trustee is appointed by the local authority or by one of the charity's funders, or where a friend of a trustee is employed by the charity.

Our *Guide to conflicts of interest for charity trustees*, available from our website under 'Guidance', helps trustees both identify and manage these conflicts and others.

Since February this year, changes in the law introduced a limited power to allow trustees to be paid

for providing goods and services - but not for being trustees - to their charity, as long as strict conditions are met. *Charity Commission News 27* contains more information on this provision.

We've provided specific guidance to charity trustees about this new

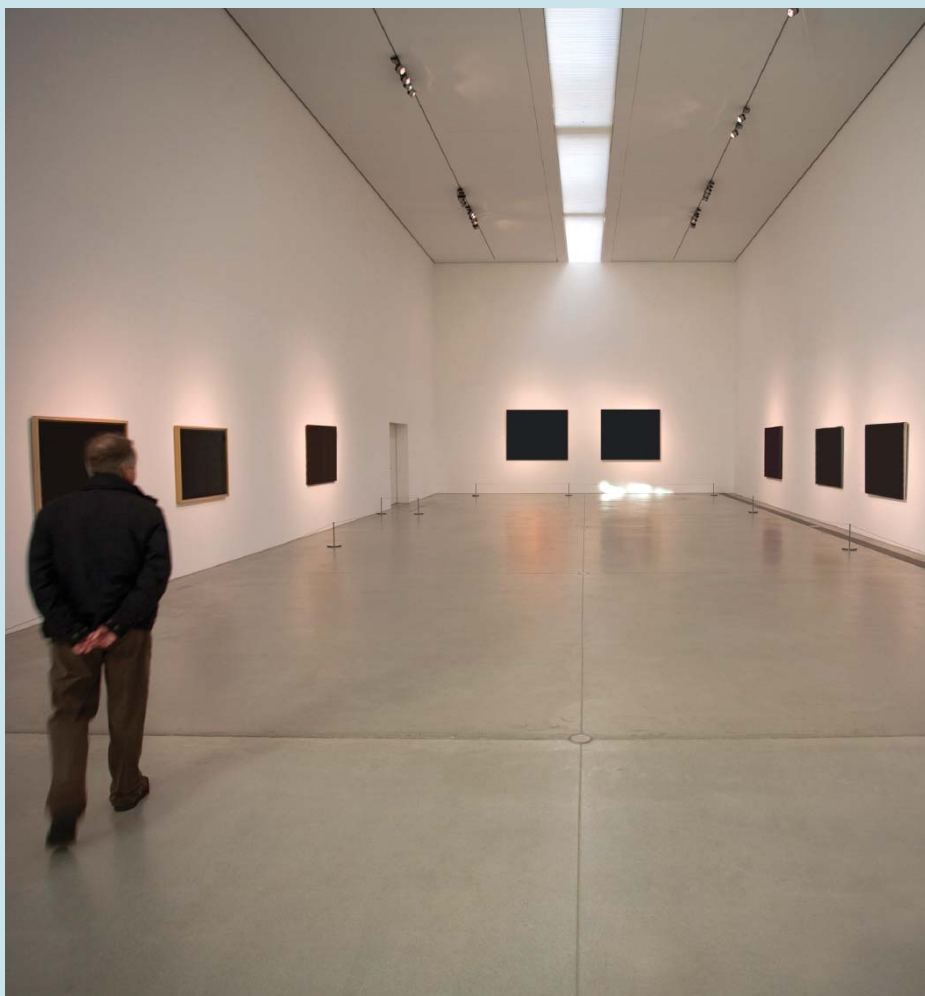
power. *Trustee expenses and payments* (CC11), available from our website under 'Publications', covers the issue in more detail.

## New guidance to help arts charities avoid conflicts of interest

The potential for unauthorised trustee benefit in museum and gallery charities which have artists on their trustee board whose art the charity may want to buy needs careful handling. Special considerations are involved if there is such a transaction between the trustees and the charity.

Legally, a charity has no power to enter into a transaction with one of its trustees (sometimes known as 'self-dealing') unless it has either authorisation to do so in its governing document or from the Commission.

Jointly with the Department for Culture, Media and Sport, we've produced new guidance for trustee boards on the issue. *Charitable Museums and Galleries: A guide to conflicts of interest policies, trustee benefits and transactions between trustees and charities* is available from [www.culture.gov.uk](http://www.culture.gov.uk) under 'Publications'.



## Save your charity money ... avoid tax penalties

HM Revenue & Customs (HMRC) are introducing a simpler system of penalties for tax errors in April 2009.

Under the new system if charities or other taxpayers take reasonable care to get their tax right they won't be penalised, even if they make a mistake.

HMRC uses penalties to stop people who don't take care from gaining an unfair advantage.

Taking reasonable care includes:

- keeping accurate records to make sure your charity's tax

returns and other tax documents are correct;

- checking with HMRC what the correct position is when you don't understand something; and
- telling HMRC promptly about any error you discover in a tax return or document after you've sent it.

HMRC say if people don't take reasonable care then errors will be penalised, and they will be higher if the error is deliberate.

Disclosing errors to them, and helping them to work out the correct amount of tax, will

substantially reduce any penalties due.

The penalties initially apply to:

- Income Tax
- VAT
- Employers paying PAYE and National Insurance contributions
- Corporation Tax
- Capital Gains Tax
- the Construction Industry Scheme

For more information visit [www.hmrc.gov.uk/about/new-penalties](http://www.hmrc.gov.uk/about/new-penalties)



## Questions, questions

**Q** I've heard it will speed up our charity's application to register with you if I use a 'model' governing document. How do I get hold of one?

**A** You're right, using one of our model governing documents will usually save time. Existing charities may find them useful if they want to update their governing document and may also find them a useful source for model provisions, with the exception of the trustee benefit clauses of course.

The different available models are:

- *Charitable Companies: Model Memorandum and Articles of Association (GD1)*
- *Charitable Trusts: Model Trust Deed (GD2)*
- *Charitable Associations: Model Constitution (GD3)*

These model governing documents are available from our website under 'About Charities' and then 'Registering a charity'.

**Q** I've noticed our charity's Register entry is wrong – how can I get it changed?

**A** This is something you can do quickly yourself via the Online Services Homepage on our website, as long as you have your charity's password and can provide full name details and dates of birth. Clicking on the 'View/Amend Charity Details' section will take you through the process and the update will normally happen within 24 hours.

If you don't already have a password and need to request one, this can also be done via the Online Services Homepage. We'll either email the secure password to an email address or, if one isn't given, post out the password to the charity address we hold within 5-7 days.

**Q** We're a small charity with under £10,000 a year so we don't need to file accounts with you. A local journalist has asked for a copy of our most recent accounts – do we have to provide them?

**A** Yes you do. Charities are legally obliged to meet reasonable requests like this and charities' accounts should be publicly available. Charities can make a small charge to cover admin or photocopying costs but they must provide copies on request. Our website encourages those who have had difficulty in getting such copies to contact us to see if our intervention is appropriate. Charities should be open, accountable and transparent in their dealings at all times.

# How to contact us

**Charity Commission Direct** for general queries and to contact any of our offices:

## **Charity Commission Direct**

PO Box 1227  
Liverpool  
L69 3UG

**Telephone:** 0845 300 0218

**Typetalk:** 0845 300 0219

**Email:** [enquiries@charitycommission.gsi.gov.uk](mailto:enquiries@charitycommission.gsi.gov.uk)

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