

Charities & Education

update

PUBLIC BENEFIT, STILL WORK TO DO

Research published by the Charity Commission in December 2009 indicates that awareness of public benefit is reasonably high, with 76% of charity trustees indicating that they know about the public benefit requirement.

98% of those who were aware of public benefit issues are confident that their charity can demonstrate public benefit, and 92% have found the Charity Commission guidance useful. It is interesting to note that 22% of charities have revised their aims as a result of the public benefit debate. For charities with income of over £500,000 this figure rises to a remarkable 38%.

A key message for charities is that those that have not considered public benefit should review the position in the near future. If the confidence of trustees-reflected in the 98% score above is justified it appears that most charities will be well placed to meet the public benefit test, particularly if the charity's aims are reviewed in the context of public benefit.



The Charity Commission has also announced that the next round of public benefit assessments later in 2010 will look at fee-charging arts charities, including the Royal Opera House, which has volunteered itself. The Commission will look at charities for the advancement of health and those working in sports/recreation.

This follows the first public benefit assessments carried out on charities in 2009. These included 5 independent schools, only 3 of which were considered to meet the public benefit test. It is clear that means-tested bursaries are the most likely way that schools can meet the test.

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TRUSTEE responsibilities

It is always important that the trustees of charitable companies are aware of their responsibilities as directors.



An issue that James Cowper's business recovery and insolvency team is seeing increasingly in these difficult economic times is a lack of awareness of statutory responsibilities, not just under the Companies Act but also under legislation as broad as that relating to employment, health and safety and the environment. Charities have continued to operate whilst being insolvent, leading unwittingly to potential financial and other liabilities for trustees.

Areas of concern are:

- Charities trading whilst insolvent - trustees can be called upon to make good the losses to creditors
- Transfer of assets at an undervalue
- Paying one creditor in preference to another
- Conduct of trustees in the lead up to the insolvency - this can lead to disqualification from acting as a trustee or director for a period
- The use of restricted funds

To protect themselves we recommend that trustees of charitable companies take steps to ensure that:

- They understand the requirements imposed by statute
- They are provided with relevant and regular financial information
- Professional advice is sought immediately if they consider that the charity is approaching insolvency, and such advice is documented and followed

If you are unsure as to your position our business recovery and insolvency team are more than happy to discuss it with you.

For more information please contact Sue Staunton on +44 (0) 1865 200500 or sstaunton@jamescowper.co.uk

Thames Valley Air Ambulance



James Cowper has been appointed as auditors of the Thames Valley & Chiltern Air Ambulance Trust. The appointment followed a competitive tender.

Chris Colton, Finance Manager, Thames Valley & Chiltern Air Ambulance Trust adds: "James Cowper is a highly respected firm of

accountants across the Thames Valley. The firm was able to show a good understanding of the air ambulance service and our specific needs and requirements. We look forward to working with them over the coming months and years."

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www.tvacaa.org

No more Lennartz for charities?

Lennartz is the mechanism that has enabled charities to recover all their VAT upfront on capital projects even where they intend to use an asset partly for "non-business" activities, provided there will be business use. The charity accounts for output tax on the non-business use over the following ten years. HMRC now say that "non-business" will only mean "private," not "non-economic business activities". Charities with existing

claims are unaffected and HMRC will consider claims from those with binding commitments on the basis of Lennartz.

This policy change follows a European Court ruling; the interpretation of that decision may be assisted by a pending UK case. Where beneficial, charities should still claim using Lennartz as this change of policy may yet be undermined.

SURVIVING the economic downturn

The Charity Commission's latest survey published in autumn 2009 indicated that charities continue to be affected by the economic downturn, with 56% reporting that it had impacted upon them.

Many charities reported that their investment income had fallen, although almost 50% of charities receiving income from grant-making trusts, trading, fund-raising or legacies reported income levels as staying the same. 70% of charities saw public sector funding remaining the same, although the anticipated squeeze on public sector funding in future years is likely to cause a problem for many charities.

20% of charities reported an increase in demand for their services, with 75% of those charities confident that they could meet the demand partially or in full. This may reflect the fact that over 50% of charities have now taken steps to counteract the effect of the downturn.

The Charity Commission have also published 'Big Board Talk' which details the questions that charity trustees should be asking. These include:

- What effect is the economic downturn having on our charity and its activities?
- Are we financially strong enough to sustain our operations?

- Do we know what impact the economic climate is having on donors and support for our charity?
- Do we have any reserves?
- Have we reviewed our banking arrangements and investments?
- Have we reviewed our contractual commitments?
- Have we reviewed any contracts to deliver public services?
- If we have a pension scheme, have we reviewed it recently?
- How can we make best use of permanent endowment investments?
- Are we an effective trustee body?
- Do we have adequate safeguards in place to prevent fraud?
- Are we making best use of the financial benefits that we have as a charity?
- Are we making the best use of our staff and volunteers?
- Have we considered collaborating with other charities?
- Are we making the best use we can of our property?

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1st January 2010 leaves charities with a headache



A number of changes have been introduced to the VAT rules governing cross-border supplies of services. Combined with a recent decision by the European Court, these changes mean greater costs and administrative burdens for many charities.

Buying services

A VAT-registered charity can no longer buy services from a non-UK supplier in a non-business capacity; there will always be a liability to account for UK VAT under the reverse charge. Generally there will be no relief for this VAT if it relates to a non-business (or, indeed, exempt business) activity.

Example 1 Investment management fees

UK VAT-registered charity buys investment management services from the US. The US supplier does not charge VAT. Before 1 January 2010, this would not have given rise to any reverse charge as the holding of investments by a charity is not generally seen as a business activity. However, after 31 December 2009, the charity must account for VAT at 17.5% on all these fees, but is unlikely to be able to recover any of this VAT.

Example 2 - Click-thru services

As a means of advertising by way of sponsored links to its website, a UK VAT-registered charity buys services from the following Irish suppliers:

- Search engine providers
- Copywriters
- Search engine optimisation experts

Even if the charity intends to use these services in relation to its non-business activities, they will now have to account for VAT under the reverse charge. HMRC argue that zero-rating is not available because the services relate to the charity's own website and, therefore, do not constitute advertising in someone else's space. This is hard to follow as the advertising is not on the charity's own website; nonetheless charities need to be aware that HMRC are taking this line.

Selling services

A UK VAT-registered charity providing services to a business in another EU country must now include the sale in a periodic EC Sales List and state on its invoice that the service is subject to the reverse charge.

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Substantial donors update



The thorny subject of substantial donors may be moving forward to a solution, following consultation with HM Revenue & Customs. A potential change may involve switching the party which is penalised if the rules are breached.

The present legislation states that where payments over £25,000 are made to a charity by a donor during a year (or more than £150,000 over a six year period) and payments are made by the charity to the

donor (e.g. for rental of a property), this expenditure is treated as non-charitable and the charity effectively pays tax on the sums paid to the donor.

The proposed change will mean that the donor will pay if the rules are breached. The payments to the donor would also only be taxable where there was a prior agreement that the donor would receive a benefit for their donation. It remains to be seen whether this proposed solution will deal satisfactorily with all the different situations which may arise.

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