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## Date for the diary...

### Annual Charities Update Seminar

The Whittingham Riddell Annual Charities Update Seminar will be held at the Shropshire Education and Conference Centre, Royal Shrewsbury Hospital on the morning of 22 November 2011. Amongst the topics discussed will be the pension changes and employer obligations. If you would like to attend the seminar which is free of charge to all delegates, please register your interest with Kathy Griffiths contactable on 01743 273273 or e-mail [kmg@whittinghamriddell.co.uk](mailto:kmg@whittinghamriddell.co.uk).

### Featured...

“Employer Duties and the New Pension Regulation”

## sector update

### Charities planning for survival

The continuing economic difficulties which have manifested themselves in an unstable employment market, creeping inflation, a continued restriction on credit and bank lending and public spending cuts, are having a detrimental impact on many charities. With central and local government reducing their funding to the sector and the wider giving population feeling their own financial pressures, many charities are having to cope with a dramatic reduction in income levels. For some, this has resulted in an unavoidable reduction in their charitable activities and for others has brought their very survival into question.

In general the sector has remained resilient, with the vast majority expecting to survive, and many charities proactively addressing the challenges the financial squeeze has presented them with. Many have revisited their strategic planning from bottom up, considering their activities, sources of income and cost base – line by line.

Whilst some have had to reduce their support activities at a time when demand has increased, for most this is an option of last resort. Many, if not the vast majority, have revisited their cost base and over a third of charities recently surveyed have taken action to reduce their staffing costs (often the largest cost for a charity) either through a reduction in hours or salary reduction. Almost as many have reduced staffing numbers through redundancy or non-replacement. In considering their cost base many organisations are considering or have already gone down the route of strategic collaboration, which has varied from of the basic sharing of certain functions to more in-depth and sophisticated service delivery. Collaboration appears to be the preferred option rather than merger, the latter appearing less attractive to many as a consequence of cultural and administrative difficulties and the loss of identity. The Charity Commission guidance “CC34-Collaborative Working and Mergers” contains useful toolkits and checklists for charities considering these options.

Whilst cost reduction, to a certain extent, is within the control of an organisation, this can only be taken so far before activities suffer both in terms of quantum and quality. This has prompted a renewed focus on income with “fundraising” and “alternative sources of income” becoming the buzz words of the sector and first on many management and trustee meeting agendas. Whilst, alive to the need to generate income from alternative sources many charities are finding this difficult with little in-house experience, full-time support and a lack of skills. The Charity Commission offers some help with guidance and support provided in its guidance “CC20 – Charities and Fundraising”. Taking a somewhat technical look at fundraising the guidance does contain some useful links including that to the Institute of Fundraising “IoF”). The IoF web site [www.institute-of-fundraising.org.uk](http://www.institute-of-fundraising.org.uk) contains some helpful information not least that contained in the section “About Fundraising”.

Notwithstanding the difficulties associated with attracting income, trustees and management can help themselves by more effective presentation and positioning of their charities, starting with the financial statements and the Trustees’ Report. Effective disclosure within the Trustees Report including that of activities and future developments along with Reserves and Reserves Policy is essential to the readers understanding of a charity’s funding needs. It is essential that the right balance is struck between presenting the need for funding on the one hand whilst presenting the picture of a robust organisation able to deliver on its promises. Many charities are using the concept of designated reserves as a tool to assist with this delicate communication – effectively identifying the level of Free Reserves which have been ring fenced by the Trustees for specified future activities and events.

There is no doubt that those charities with strong and well defined leadership, a definitive, well constructed and communicated strategic plan along with good reporting mechanisms (including financial and operational) are better equipped to deal with the challenges than those lacking in these areas.

### The future of cheques

Plans to abolish cheques by 2018 have been cancelled. The announcement on 12th July 2011 by the Payments Council that “cheques will continue for as long as customers need them” has been met with approval by a broad range of charities for which cheques are seen as an integral part of their fundraising activities.

### The Bribery Act

The Bribery Act 2010 which came into force in July 2011 brings with it significant penalties for those violating the Act. Organisations, including charities, face unlimited fines whilst individuals in violation could be imprisoned for up to 10 years. However, the potential reputational damage to a charity for non-compliance could have far greater ramifications, resulting in a loss of confidence and support from donors and the wider public which may put the charity’s very existence in jeopardy. It goes without saying that Charities must comply with the requirements of the Act and the Commission expects trustees to implement good practice in accordance with their duty to “protect the property and reputations of their charities”.

Bribery is defined as offering, promising or giving someone a financial or other advantage to encourage them to perform their functions improperly, and includes where it is known or believed that the acceptance of the advantage in itself constitutes improper performance. It also means asking for or agreeing to accept a bribe.

The Bribery Act creates four criminal offences:

- Bribing another person
- Accepting a bribe
- Bribing a foreign official
- (for commercial organisations) failing to prevent bribery

The Ministry of Justice guidance confirms that the Bribery Act applies to charities and charities may encounter corruption of some kind wherever they operate. The Charity Commission recommends that all charities adopt a risk-based approach, adopting policies and procedures to comply with the act.

#### Guidance to charities

The Charity Commission website provides guidance as to the steps which charities can take to prevent bribery. The guidance includes the six principles set out by the Ministry of Justice to assist in setting anti-bribery policies and procedures. These are as follows:

- **Proportionate procedures** – the procedures to prevent bribery should be proportionate to the risks the organisation faces and to the nature, scale and complexity of its activities
- **Top level commitment** – of the trustees and senior management to preventing bribery
- **Risk assessment** – the organisation assesses the nature and extent of exposure to the potential external and internal risks of bribery (periodic, informed and documented)

- **Due diligence** - the organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform services on its behalf
- **Communication (and training)** - bribery prevention policies and procedures should be embedded and understood throughout the organisation through internal and external communication (including training) – proportionate to the risks it faces
- **Monitoring and review** – organisations should monitor and review procedures designed to prevent bribery

## Key reporting and compliance thresholds - reminder

Many charities are still uncertain over what level of scrutiny the accounts are subject to and exactly what they need to submit annually to the Charity Commission. This is especially the case where the charity's income is subject to major fluctuations e.g. a single significant legacy.

### External Scrutiny

Income Levels			
Up to £25k	>£25k to £250k	>£250k to £500k	>£500k
No external scrutiny (ref 1)	Independent Examination (Ref 2)	Independent Examination (by qualified examiner) unless gross assets exceed £3.26m in which case Statutory Audit is required (Ref 2)	Statutory Audit

Ref 1 - These thresholds apply unless the charity's governing documents stipulate that an Independent Examination or an audit is required.

Ref 2 - These thresholds apply unless the charity's governing documents stipulate that an audit is required.

### Information to be sent to the Charity Commission

The information to be sent to the Charity Commission depends upon the size of the charity in terms of income level in a financial period and is as follows:

Income in the period	Annual Information Update	Annual Return Part A – Charity Information	Reporting Serious Incidents (RSI)	Annual Return Part B – Financial Information	Annual Return Part C – Summary Information Return	Trustees' Annual Report and Accounts
£10k or less	✓					
>£10k - 25k		✓	✓			
>£25k - £500k		✓	✓			✓
>£500k - £1m		✓	✓	✓		✓
>£1m		✓	✓	✓	✓	✓



## Excepted and Exempt charities

The Charities Act 2006 introduced changes to the principles covering excepted and exempt charities. In broad terms some charities are "excepted" or "exempt" from registering with the Charity Commission.

"Excepted" charities are not required to register with the Commission but are regulated by it. Excepted either by legislation or an order made by the Commission these charities are:

- Churches and chapels (of some Christian denomination)
- Charitable service funds of the armed forces
- Scout and Guide Groups

"Exempt" charities cannot register with Commission and are supervised by another regulator. Exempt charities include:

- Most universities in England
- Industrial and Provident Societies
- Many national museums and galleries
- The governing bodies of voluntary and foundation schools

The 2006 Act provides for a fairer and simpler system applicable to all charities. The changes, being phased in gradually, include the following key principles:

- Charities can only be "excepted" if their income is below £100,000 per year – this income threshold may be reduced over time
- "Exempt" charities must either:
  - Have a "principal regulator" ; or
  - No longer be exempt and be regulated by the Commission

## Investment considerations

Many Charities have faced numerous challenges in the last few years and one of the most common is how to maximise the returns on their reserves.

Historically, higher interest rates have often allowed charities to hold cash deposits which still produced a reasonable rate of interest, often above inflation, whilst still protecting the capital value. However, a combination of record low interest rates, which we feel may still continue for some time, and high inflation means that cash deposits are now losing value on real terms, with the best deposit rates on offer often struggling to get above 2.5%.

In addition, those Charities that do hold other types of assets, such as investment portfolios, will have witnessed significant volatility in the capital value and dividend income since the start of the financial crisis.

Whatever assets you hold, it is important for all Charity trustees to:

- Have a clear documented investment statement that sets out your objectives e.g. income or growth;
- Regularly review the existing holdings and document your decisions; and
- Seek professional advice each year to provide an objective assessment of the performance of your investments

No one is immune to the impact of the current financial crisis and Charities, as much as individuals need to ensure they are doing everything possible to protect their capital.

For more information please contact our Independent Financial Advisors at Redbourne Wealth Management, Rags Bram (R Bram@whittinghamriddell.co.uk, T: 01743 273273) or Martine Duffy (md@whittinghamriddell.co.uk, T: 01743 273273)



## "Use Public Benefit Reporting to show your impact"

New independent research, performed by Sheffield Hallam University on behalf of the Charity Commission, has revealed that many charities do not effectively describe, through their public benefit reporting, how people can benefit from their work. Such charities are missing out on an opportunity to explain the benefits of their activities and in doing so are missing out on the opportunity to attract potential funders.

The public benefit reporting requirements which took effect for accounting periods beginning on or after 1 April 2008 cover two areas, namely:

- Reporting the activities undertaken by a charity in order to carry out its aims for the public benefit and reporting its achievements; and
- Confirmation by the Trustees that they have paid due regard to the Charity Commission guidance on public benefit in determining their activities

The research assessed how well charities are complying with the public benefit reporting requirements (in their Annual Trustees' Report). The research shows that charities are generally able to explain their aims and who benefits from their work but often fail to explain how they benefit.

The research showed that whilst charities with an income in excess of £500k generally complied with the requirement to address public benefit in their Annual Trustees' Report only 26% of those surveyed in this category complied fully with the requirements. The percentage of charities fully complying fell to 10% for those with an income of between £100k and £500k and to just 2% of those with an income below £100k.

The Charity Commission has expressed concern that some trustees have not familiarised themselves with the public benefit guidance and requirements. The research also highlighted confusion amongst charities about the purpose and importance of their Annual Trustees' Report.

## commission guidance & reports

### Commission guidance and reports issued in 2011

The Charity Commission continues to issue new and updated guidance and reports covering a broad range of topics. New and updated guidance and reports issued in 2011 available on the Charity Commission website ([www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)) include the following:

#### Guidance

- CC20 - Charities and Fundraising
- CC21 - Registering as a Charity
- CC23 - Exempt Charities
- CC25 - Managing charity assets and resources: an overview for trustees
- CC36 - Changing your Charity's Governing Document
- CC45 - Regulatory Compliance Casework – Guidance
- CC46 - Statutory Inquiries into Charities – Guidance
- CC48 - Charities and Meetings
- CC49 - Charities and Insurance
- Equality Act

#### Research Reports

- RS25 - Public benefit reporting by charities
- RS26 - Consortia for the delivery of public services: the issues for small and medium sized charities

### Commission guidance on the Equality Act

The Equality Act 2010, which consolidates the previous equality legislation, aims to protect people who share specified characteristics against discrimination. In broad terms the general principles of fair and equal treatment, encased within the Act, apply to charities as much as they do to any other organisation. However, the Act contains certain exemptions for charities without which many charities simply would not be able to function and fulfil their desired aims.

The Charity Commission has published more detailed guidance on key sections of the Equality Act which is available on its website. The guidance specifically focuses on the "charities' exception", that part of the Act dealing with the ability of a charity to limit the group of people whom it helps and explains what both existing charities and people seeking to register new charities need to know. The charities' exemption allows a charity to limit its benefits to people who share a protected characteristic if the restriction is based upon the need or disadvantages experienced by that group, or can be justified, as a fair, balanced and reasonably necessary way of carrying out a legitimate aim.

### Risk information for small charities

The Charity Commission has published new guidance for small charities on risk management. The guidance poses 10 questions that small charities should ask themselves to avoid problems. These cover:

- Ensuring a charity is working in line with its governing documents
- Ensuring all trustees are properly appointed
- How to assess risk and the importance of preparing accounts and trustee reports

The guidance also covers simplified risk management for small charities as well as how small charities can avoid typical risks.

The information can be found in the small charities section of the Commission's website and is aimed at those charities not reflecting the complexities of the Commission's full guidance.

### Trustees Toolkit – final chapter published

The Charity Commission published its final chapter on "Protecting Charities from Harm" its online compliance toolkit for charity trustees in June. It aims to give trustees some practical advice to help manage risks and protect their charity from harm. The final chapter covers holding, transferring and receiving funds safely.

The earlier chapters included:

- Due diligence and monitoring; and
- Fraud and financial crime



## employment matters: featured article

### Employer Duties and the New Pension Regulations

The pensions Act 2008 laid out the new employer duties, including automatic enrolment. Changes have been proposed in the Pensions Bill 2011 and various draft Department for Work and Pensions ("DWP") Regulations. Summarised below is the most up to date position for defined contribution schemes only (there are different requirements for defined benefit and hybrid schemes).

#### Overview of the employer duties

Commencing from October 2012, any UK employer who employs at least one person will be legally obliged to:

- Set up and register a pension scheme suitable for automatic enrolment
- Automatically enrol certain workers (known as eligible jobholders) into that pension scheme
- Arrange membership of a pension scheme for certain other workers
- Make contributions for eligible jobholders and certain other workers
- Manage the automatic enrolment, joining and opt out process
- Provide specific information to workers, pension scheme providers and The Pensions Regulator (TPR); and
- Keep records of how they have fulfilled and continue to fulfil their duties

#### Timetable

The employer duties will be introduced from October 2012 to September 2016. Larger employers will have their duties imposed first, smaller employers last. TPR will generally determine the size of the employer based on the PAYE scheme information available to them on 1 April 2012.

#### Different types of worker

Employers will have different duties depending on the type of worker. Employers will need to identify each type of worker and perform the relevant duties for each type. Workers are defined as anyone who works under a contract of employment or who works for or performs services personally for another party to the contract. Exclusions include the self employed and company directors where there is no contract of employment and/or there are no other workers.

#### Automatic enrolment

Employers must register with TPR that they have an automatic enrolment scheme in place within four months of their commencement (or staging) date and re-register every three years. An automatic enrolment scheme must satisfy certain requirements including the "quality requirements". For defined contribution schemes the quality requirement is primarily based on minimum contribution levels which will be phased in over five years from the start of the employer duties in October 2012. There will be a total minimum contribution requirement and employers will be required to pay an element of this but may choose to pay the workers contribution too.

There will be two methods available to meet the minimum contribution level, namely "Qualifying Earnings" and "Self-Certification" (the former based upon actual earnings and the latter based upon the employer's definition of "pensionable salary"). Employers may use one or a combination of options to meet the minimum contribution level.

#### The National Employment Savings Trust ("NEST")

Employers who do not have, or who do not set up, their own automatic enrolment scheme with a pension provider, have the option of using NEST. This scheme is designed to be low cost and is specifically aimed at low to medium earners and micro employers. NEST can also be used in conjunction with a provider's scheme.

There are certain restrictions which apply to NEST, as follows:

- There is a general ban on transfer in and out
- There is an upper contribution limit (currently £3,600 each year)
- Limited retirement options
- Limited investment options; and
- Death benefits paid from NEST are potentially subject to inheritance tax as the trustees have no discretion over the payment of death benefits

There is a statutory duty to review NEST in 2017, five years after automatic enrolment begins. Note, it is expected that the ban on transfers will be lifted and the maximum contribution rule removed.

For more information on pension changes please contact our independent financial advisors at Redbourne Wealth Management, Rags Bram (RBram@whittinghamriddell.co.uk, T: 01743 273273) and Martine Duffy (md@whittinghamriddell.co.uk, T: 01743 273273).

taxation and vat

Charitable Giving – Consultation on IHT Incentive

The Budget in March this year announced proposals to introduce a reduced rate of inheritance tax - 36% down from 40% - where 10% or more of the net estate is left to charity, with this new rate to be effective for deaths from 6 April 2012 onwards. Despite this announcement details were fairly thin on the ground leaving many unsure as to the impact of such a reduction upon the amount of inheritance tax payable and the amount remaining for the beneficiaries.

Thankfully H M Revenue & Customs have produced a consultation document which has given a clearer indication as to how they foresee this new rate will operate in practice.

Take for example an estate with a value of £1 million with a single nil-rate band available of £325,000, bear in mind that to qualify for the reduced rate would require a charitable legacy of £67,500, and consider the following three scenarios (also set out in the table below):

First, with no charitable donation at all the inheritance tax payable would be £270,000 and the beneficiaries would receive £730,000.

Second, with the charitable legacy of £67,500 then under the current rules the inheritance tax payable would be £243,000 and the beneficiaries would receive £689,500.

Third, with the charitable legacy of £67,500 then following the introduction of the proposed new rules and the reduced rate of inheritance tax for the estate, the inheritance tax payable would be £218,700 and the beneficiaries would receive £713,800.

So, from the point of view of the beneficiaries the donation of £67,500 costs them £40,500 at the moment which is 60% of the value of the donation.

Under the proposed new rules the same donation would cost them just £16,200 which is 24% of the value of the donation.

Clearly then the beneficiaries of estates where the deceased has already made provisions for sizeable charitable legacies will be rendered significantly better off by the proposed change to the legislation.

Would this be sufficient to persuade those with no charitable provision in their Wills to include one? Or to encourage those who have already made such provisions to increase them? Only time will tell.

From a practical point of view this is an 'all or nothing' reduction. So, if the donation is only 9% of the value of the net estate the rate of tax payable remains at 40%. Care should therefore be taken by those hoping to take advantage of the 36% rate that changes in value of their net estate do not reduce the donation below the 10% level required.

Table showing the effect of a donation of £67,500 on a gross estate of £1,000,000 (net estate £675,000):

	Sum retained by beneficiaries	Cost to beneficiaries	Cost as % of donation
No donation	£730,000	n/a	
Current rules	£689,500	£40,500	60%
Proposed rules	£713,800	£16,200	24%



## VAT Matters

### Construction services

HMRC has issued its draft public notice on VAT on construction services which includes proposed changes in respect of design and build contracts. The draft notice seeks to stop the current practice which enables VAT on professional fees associated with construction through the use of a design and build contract (ordinarily standard rated) to be zero rated or reduced to 5% depending upon the circumstances.

### Consultation on cost sharing exemption

HMRC has commenced its consultation on the VAT cost sharing exemption. The VAT cost sharing exemption is a provision in European law that allows businesses and organisations making VAT exempt and or/non-business supplies to form groups to achieve costs savings and economies of scale. Once formed the groups are relieved of a VAT charge on their supplies if all the conditions of the exemption are met. The consultation invites comments on a possible model for the cost sharing exemption that could be introduced in the UK.

The principal benefit of the exemption is that by removing a VAT charge, it will facilitate efficiency savings for certain organisations unable to recover all of their VAT, including charities, wishing to work together. HMRC's current estimate of the savings to be generated by implementation of the exemption is in the region of £200m.

HMRC have advised that there is considerable uncertainty as to the scope and purpose of the exemption and it's also not clear how the various conditions of the exemption should be applied. The consultation closes on 30th September 2011.



## The Team

Whittingham Riddell employs specialist staff and a dedicated team who work in the charities, education and not-for-profit sector. Our extensive portfolio has enabled us to develop an in-depth knowledge of the accounting and broader issues consistent with the specialist sector.

Our charities team offers a proactive service to our clients which extends beyond the specifics of any engagements. In addition to our annual update seminar and the publication of newsletters, we deliver bespoke seminars and courses to suit the specific requirements of clients.

## For more information.....

We hope you find Charities News of interest. If you have questions about any of the topics covered, please call a member of our specialist charities team below:

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