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Charity Law

Update

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Charities urged to review their safeguarding governance

The Charity Commission has urged charities to review their safeguarding and management arrangements and performance every twelve months. It emphasises that safeguarding is a key governance priority for trustees of all charities and is not only a concern of charities working with children and adults at risk.



The Charity Commission's guidance about safeguarding duties for charity trustees has recently been updated and is available at gov.uk/guidance/safeguarding-duties-for-charity-trustees.

Trustees also have duties to report serious incidents which would include any safeguarding issues, or serious safeguarding incidents, complaints or allegations which have not already been reported to The Charity Commission.

Safeguarding goes to the centre of promoting public trust and confidence in charities. Charities should ensure that their trustees and senior managers are not disqualified from acting as trustees or senior managers of charities in the light of the new disqualification circumstances and updated declarations of eligibility issued by The Charity Commission last year.

All trustees should consider safeguarding in the context of their charity and be familiar with The Charity Commission's guidance about safeguarding duties for charity trustees. Charities need to obtain criminal records' checks where the position is eligible, references and checks on gaps in work history, confirmation that staff can work in the UK and health checks (where relevant) to ensure that trustees, staff and volunteers are suitable and legally able to act in their positions. Charities that work with children or adults at risk should find out what checks are available from the Disclosure and Barring Service.

The Charity Commission's guidance emphasises that a charity's safeguarding policies and procedures must be put into practice and be reviewed at least once a year and where relevant, made available to the public.

Policies need to make it clear how a charity will:

- protect people from harm
- enable people to raise safeguarding concerns
- handle allegations or incidents
- report to the relevant authorities

A Code of Conduct should also govern staff or volunteers and explain the charity's culture and how people in the charity should behave. The Charity Governance Code is useful in respect of this and can be viewed at charitygovernancecode.org.

The Charity Commission is itself seeking to appoint individuals as interim managers who have particular knowledge and experience of safeguarding and implementing policies and procedures to protect people from risk.

Charities that do not take safeguarding seriously or do not put in place appropriate policies and codes of conduct may, at the extreme end, find themselves the subject of an Interim Manager Order in respect of their safeguarding governance.

Safeguarding also includes protecting a charity's volunteers and staff from harm and having clear policies and procedures on:

- bullying and harassment
- whistleblowing

Therefore safeguarding is not merely confined to safeguarding children or adults at risk and impacts upon all charities which have trustees, staff and volunteers.

We can provide further advice or assistance to charities on safeguarding issues if required. Please contact gerry.morrison@rollits.com.

Change to non-primary purpose trading threshold

Charities that trade will be interested in the increase to the small trading tax exemption thresholds which will come into effect from April 2019. The changes were announced in the Budget last year. Non-primary purpose trading is trading that does not directly further the charity's purposes and which is carried out solely to generate funds for the charity.

Charities are exempt from corporation tax on profits from primary purpose trading that directly furthers their charitable purposes (e.g. sale of entry by a museum and galleries charity or tickets to performances by a theatre charity). However, charities cannot carry out non-primary purpose trading on a substantial or permanent basis without incurring a tax penalty and breaching charity law. The current small trading tax exemption allows charities to carry out a small amount of low-risk trading that does not directly further their primary purposes.

This may assist some charities that carry out small amounts of low-risk non-primary purpose trading. Such charities may no longer require a subsidiary to undertake small amounts of low risk non-primary purpose trading in the light of the increase in the small trading tax exemption limits.

Charities should continue to consider the use of subsidiaries if they carry out non-primary purpose trading and whether turnover derived from such trading will be within the increased limits or likely to exceed them. If the limits are likely to be exceeded or if any trading is high-risk then a subsidiary ought still to be used.

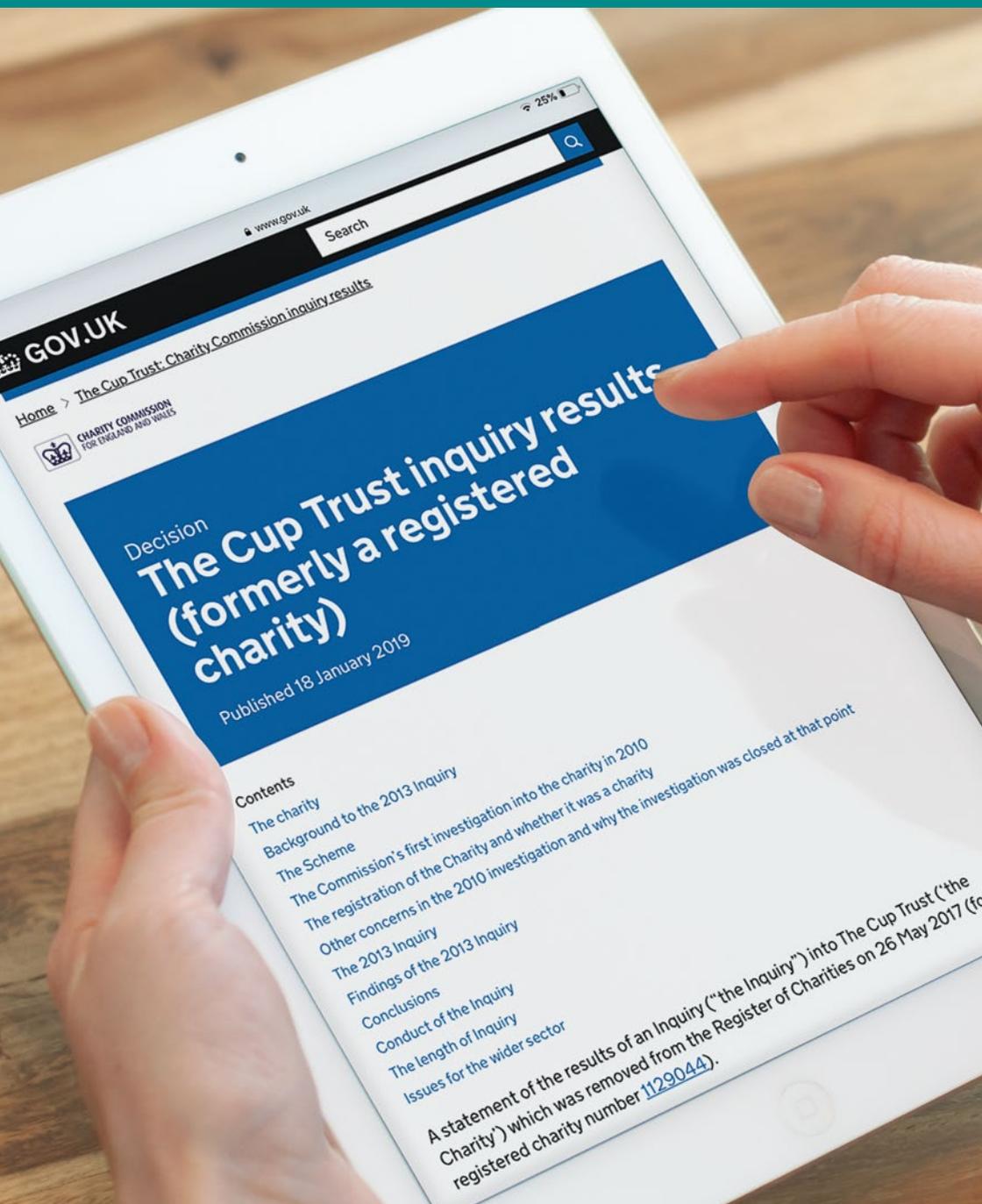
The current turnover limits are:

Annual charity income	Maximum turnover non-primary purpose trading per financial year
Under £20,000	£5,000
£20,001 to £200,000	25% of your charity's total annual turnover
Over £200,000	£50,000

From April 2019 the turnover limits will increase to:

Annual charity income	Maximum turnover non-primary purpose trading per financial year
Under £32,000	£8,000
£32,001 to £320,000	25% of your charity's total annual turnover
Over £320,000	£80,000





Decision The Cup Trust inquiry results (formerly a registered charity)

Published 18 January 2019

Contents

- The charity
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- The Scheme
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- The registration of the Charity and whether it was a charity
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- The 2013 Inquiry
- Findings of the 2013 Inquiry
- Conclusions
- Conduct of the Inquiry
- The length of Inquiry
- Issues for the wider sector

A statement of the results of an Inquiry ("the Inquiry") into The Cup Trust ("the Charity") which was removed from the Register of Charities on 26 May 2017 (registered charity number [1129044](#)).

Charity Commission publishes final report on Cup Trust inquiry

The Charity Commission has published its final report in respect of its inquiry into The Cup Trust. An inquiry was opened into The Cup Trust on 12 April 2013 following information from HM Revenue & Customs about the charity's involvement in a tax avoidance scheme. The Charity Commission was concerned that cases such as The Cup Trust damage public trust and confidence when charities are used as tax avoidance vehicles and for private as opposed to public benefit.

The Charity Commission concluded that The Cup Trust's sole corporate trustee, Mounstar (PTC) Limited had failed to fulfil its legal duties as a trustee in terms of the charity's participation in a complex tax avoidance scheme.

The Charity Commission has also concluded that The Cup Trust was misused by its sole corporate trustee to assist higher-rate taxpayers in reducing their tax bills, and to earn significant fees for individuals connected to the tax avoidance scheme. If the tax avoidance scheme had been successful The Cup Trust would have benefited from Gift Aid repayments, but personal benefits to the individual donors were not merely incidental and were not legitimate. Therefore, HM Revenue & Customs did not grant any tax reliefs to The Cup Trust pursuant to the Gift Aid Scheme.

The Report also concludes that the sole corporate trustee failed to manage serious conflicts of interest arising from its relationship with individuals who devised (and benefited from) the tax avoidance scheme.

In the end, interim managers were appointed by The Charity Commission to take over the management and administration of The Cup Trust, to the exclusion of the sole corporate trustee.

The Cup Trust is probably one of the worst examples of a charity being misused in an aggressive tax avoidance scheme. Wider lessons for the sector are that charities should ensure that their relationships with donors are properly managed and abide by donor-benefit rules. Charity trustees should not inadvertently allow the charity to be misused by individuals for tax avoidance purposes.

The Charity Commission has also used its new power to disqualify Mounstar (PTC) Limited from charity trusteeship.

The Charity Commission has stated that it has also learnt from dealing with The Cup Trust incident. In response, it has strengthened its approach to identifying and dealing with risks facing charities, improved its pre- and post-registration processes and become more robust in using its legal powers to ensure charity trustees comply with their legal duties and responsibilities.



Accumulation of income – charity trustees' duties

Trustees of charities, in particular grant-making charities often ask how long they can accumulate all of the charity's income.

This is particularly relevant for grant-making charities whilst trustees identify suitable beneficiaries or charitable purposes to donate to.

The Charity Commission's guidance on this issue is that the incoming resources of a charity should be applied as income unless the trusts/conditions attaching to them identify them as endowment/capital.

Charity trustees have a general duty to apply the charity's income for its purposes within a reasonable period of receipt (subject to any valid provision in the charity's governing document which may authorise the conversion of income resources into endowment/capital).

The Charity Commission recognises that trustees may decide that it is the charity's interest to retain some reserve of income. Hence charity trustees may apply the charity's income for its purposes within a *reasonable period of receipt*. However, it is clearly unreasonable to retain income without justification and if there is no clear connection between retaining income indefinitely and the proper administration of the charity.

The Charity Commission also provides guidance to charities on setting a reserves policy. A prudent reserves policy must also be balanced against the trustees' legal duty to spend the charity's income for its purposes within a reasonable period of receipt.

The charity should have a properly-informed policy which can be justified as being in the charity's and its beneficiaries' best interests if the trustees wish to accumulate income rather than spending it in furtherance of the charity's purposes.

Trustees should also keep minutes of their decision-making and adopt a formal policy in respect of the accumulation of the charity's income and reserves. It is reasonable to accumulate income if the trustees have a particular project or charitable purpose that they wish to accumulate income for. However, it is unreasonable to continue to accumulate income on the basis that no suitable beneficiaries can be found within a reasonable period. If no suitable beneficiaries can be found then the trustees should consider applying to The Charity Commission to vary the charity's purposes and/or seek help from other charities or organisations in finding qualifying beneficiaries.

What's new in 2019?

Consultation charging charities for Charity Commission services

The Charity Commission has delayed its consultation on proposals to increase its funding by charging charities for its services. It will be interesting to see whether The Charity Commission undertakes this consultation in 2019.

The Charity Commission's strategic plan emphasised that it does not currently have all the resources it needs to fulfil its strategic mission. This will not come as a surprise to anyone who is used to regularly dealing with The Charity Commission. The Charity Commission's response times have become increasingly lengthy which can make it difficult for charities to readily adapt and operate in a commercial environment.

In November 2018, the Chair of the Charity Commission indicated that The Charity Commission was not yet ready to open a consultation on the issue.

Anyone interested in obtaining further details on The Charity Commission's charging proposals can access The Charity Commission's practice note "*Charity Commission: What it does and where to access its services and guidance: charging*".



Charities connected with non-charitable organisations

The Charity Commission published draft guidance last year in respect of charities connected with non-charitable organisations. It undertook a consultation in respect of this draft guidance which closed on 15 May 2018. The Charity Commission was expected to publish final guidance for charities on their relationships with connected non-charitable organisations later in 2018, but this did not happen. This may happen in 2019 and if so, we will report on the final guidance and any key changes from the draft guidance published last year.

Gift Aid

Provisions have been included in the Finance Bill 2019 to simplify the complex Gift Aid Donor Benefits Rules. The measure will apply to gifts by individuals and payments by companies made on or after 6 April 2019.

The maximum amount that an individual can donate in cash or by contactless payments under the Gift Aid Small Donations Scheme is also expected to be increased to £30 from £20 from 6 April 2019. This is to align the Scheme with the limit for contactless payments in the UK.

Continues on next page...

What's new in 2019? (continued)



New insolvency regime for Further Education Colleges

Further Education Colleges and Sixth Form Colleges in England and Wales (the vast majority of which are exempt charities) will be aware that the new insolvency regime (known as Education Administration) came into force on 31 January 2019.

We can provide training to Further Education and Sixth Form Colleges on the new insolvency regime. Further information can be obtained from caroline.hardcastle@rollits.com.

Information

If you have any queries on any issues raised in this newsletter, or any charity matters in general please contact:

Gerry Morrison on 01482 337339 or email gerry.morrison@rollits.com

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The law is stated as at 6 February 2019.

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