

Charities Focus



"Protecting data, protecting people" data protection guidance for charities

Collecting personal data from fundraisers, supporters, staff and trustees (amongst others) is crucial for charities to operate effectively.

Charities will often hold vast amounts of personal information and it is imperative that the correct policies and procedures are in place to ensure that the information is not misused. The potential for reputational damage for charities as a result of misuse of personal information is huge as well as risk of enforcement action or the imposition of a civil monetary penalty from the Information Commissioner's Office (ICO).

The ICO provided a warning to all charities when it issued a £70,000 fine to a social care charity found to be in serious breach of the Data Protection Act 1998 ("the DPA") after a social worker left highly sensitive information about the care of four young children outside a London home. It is clear that the ICO will not shy away from issuing monetary penalties to charities when there is a serious breach of the DPA.

The decision of the Supreme Court in *Kennedy v Charity Commission* is a reminder that the policies and procedures adopted by charities may also come under public scrutiny. As with all public authorities, the Charity Commission is subject to information requests under the Freedom of Information Act 2000. Kennedy, a journalist for *The Times* newspaper, sought the disclosure of information relating to the Charity Commission's inquiries into the Mariam Appeal, which were instigated after allegations were made that improper

donations had become funds of the Appeal. The Charity Commission refused to supply the information on the basis that it was obtained during a statutory inquiry and so fell within a legal exemption. The decision was appealed to the Supreme Court.

Whilst the Supreme Court found in favour of the Charity Commission, it held that the exemption applied by the Charity Commission could have been challenged under charities legislation and common law. It was also clear from the judgment that when considering disclosure, there is a delicate balance between public interest in the transparency of decisions and the need for confidentiality in the exchange of information. Therefore, charities should bear in mind that any information supplied to the Charity Commission, including information of a damaging nature such as the misuse of personal data, could be subject to a freedom of information request and released to the public.

In order to assist charities avoid potential pitfalls and ensure compliance with the DPA, the ICO has published a new data protection guide entitled "Protecting Data, Protecting People: A Guide for Charities". A review of the guidance would be advisable to anyone involved in the handling of personal data within a charity. The guide provides a breakdown of the data protection principles and offers case studies to demonstrate practical examples of the effects of the principles.

In producing the guide, the ICO undertook advisory visits to a number of charitable organisations to assess how the sector handles personal data. Whilst each organisation differed, a number of common themes were found. The ICO stated that there was general room for improvement in the way in which personal data was secured (for example by improving the level of password complexity) and that there should be annual refresher training for staff on handling personal data.

If you are concerned with the way that your charity handles personal data or are unclear as to whether you have the correct policies and procedures in place, the ICO offer free one day advisory visits. After the visit, the ICO will issue a report summarising their findings and offering practical advice on how to improve the ways in which your charity handles personal data.

David White

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Charity Commission revised guidance

The Charity Commission has amended its guidance on setting up a charity that emphasises key factors people should consider before applying to register a new charity.



The guidance: *How to set up a charity (cc21a)* provides a seven-step guide to help people to consider whether setting up a new charity is the right option.

This follows concerns voiced by the Charity Commission's out-going Chief Executive, Sam Younger, that too many charities are being set up that simply duplicate the work of other charities and the guidance suggests that in some circumstances it might be more appropriate to work with an existing charity, set up a named fund with an existing charity or to set up a social enterprise.

The guidance is intended to make people think before opting for a charity because in some circumstances it may not be the right vehicle or the appropriate option.

The guide also makes it clear that if a charity is based in England and Wales and is not a charitable incorporated organisation it is not necessary to apply to the Charity Commission for registration if its gross annual income is less than £5,000. It is still possible to apply to HM Revenue & Customs for recognition as a charity to get charity tax relief and claim Gift Aid.

It is possible to apply to the Charity Commission to register charities with gross annual income of less than £5,000 voluntarily, but the Charity Commission will only consider applications in exceptional circumstances (e.g. if you can prove that your charity has been offered significant funds, but has to provide a registered charity number before it can receive the funds).

We can help to assess the available options for anyone thinking of setting up a new charity, but unsure whether it is the right way forward.

Gerry Morrison

Proposed new powers for the Charity Commission

The Queen's speech announced a draft Protection of Charities Bill that will bring into force changes to the law proposed in a recent consultation by Nick Hurd, Minister for Civil Society.

The proposed changes include wider powers for the Charity Commission to disqualify trustees, rights to shut down a charity and transfer its assets to another charity and increased powers for the Charity Commission to act in more situations and to use these outside of a statutory enquiry. The Charity Commission has faced recent criticism that it is not tough enough as a Regulator.

The Protection of Charities Bill is not law yet and is only in draft format. It remains to be seen what if any changes will be made to the final Bill and how it will progress through Parliament.

Some commentators have voiced concerns that the Charity Commission is being asked to take further action and show its teeth as regulator whilst operating to a significantly reduced budget. Other commentators are concerned that the new powers may go too far and lead to the Charity Commission showing little understanding and may threaten the independence of the Voluntary Sector.

We will continue to monitor and report on the Bill's progress.

Gerry Morrison



Legacy giving

Points to consider in appeal literature

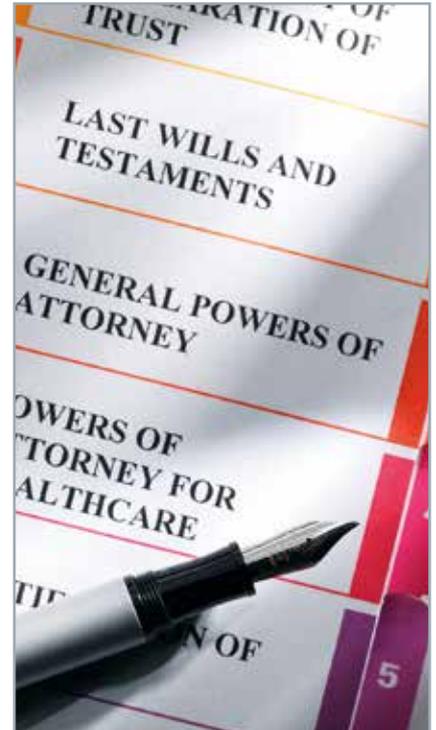
It is useful for those charities which promote legacy giving to their supporters, to be aware of inheritance tax incentives for potential donors to leave charitable legacies in their Wills.

The Finance Act 2012 introduced a lower rate of inheritance tax for testators who leave 10% or more of their net estate to charity. The lower rate of inheritance tax is 36% instead of 40%. This lower rate applies to testators who died on or after 6 April 2012.

10% might sound like a lot to some potential donors. On the face of it, they might think that for a £500,000 estate a donation of £50,000 is required, but it is only 10% of their net estate. So if they have their nil rate band available, (which is currently £325,000 and will be until 2017-

18), the threshold might be lower than they thought, and this could encourage more people to give to a charity to get the benefit of the rules.

The Finance Act sets out the conditions that must be met for an estate to qualify for the lower rate of inheritance tax. The lower rate can apply only if part of the estate is chargeable to inheritance tax at a rate other than 0%, that is, where the 40% rate would otherwise apply to the value of the net estate in excess of the nil rate band, after deducting exemptions and reliefs.



This tax incentive may encourage more people to make gifts and supporters may also be encouraged to increase existing gifts. The rules could also lead to post-death variations. It is possible to obtain the lower rate of inheritance tax as a result of retrospective treatment under the Inheritance Tax Act 1984 where a beneficiary under the Will or Intestacy Rules, makes a gift to a charity by a deed of variation within two years after the testator's death.

So what are the points to consider in appeal literature? Well, this is an ideal opportunity for charities to raise awareness and to promote the advantages of leaving a gift to charity by Will and for testators to review any existing gifts in their current Wills.

Charities must ensure that wording in any of their appeal literature is not misleading. At first glance, when you hear that a 10% gift to charity means a 10% reduction in inheritance tax, this can look to a layperson as if you can always leave the gift to charity without having any adverse effect on the other beneficiaries.

Potential donors are encouraged to seek professional advice as the rules are complex and individuals need to ensure that they get inheritance tax advice to ensure that their wishes are implemented properly to benefit both themselves and the charity.

Increasing tax benefits gives charities the opportunity to look at taking advantage of increasing legacy income. We can assist charities by advising on the wording of appeal literature.

Sarah Greendale

In brief

The Finance Bill 2014

The Chancellor, George Osborne, delivered his Budget on 19 March 2014. There were a number of announcements in respect of the charity sector, some of which have been incorporated in The Finance Bill 2014.

Charity avoidance vehicles

The government published for comment, measures to prevent charities established for the purpose of tax avoidance from being entitled to claim charity tax reliefs. The paper followed from an announcement by the chancellor in the Autumn Statement that legislation would be brought forward, and from a confidential consultation on one potential proposal with stakeholders including the Charity Tax Group (CTG).

The deadline for response to HMRC's consultation was 11 April 2014. Based on responses to the discussion paper and wider informal consultation amongst the charity sector, the government has decided not to change the definition of a charity for tax purposes in Finance Bill 2014. Feedback confirmed that the proposals outlined in the paper would have a disproportionately negative effect on charities and donors. HMRC points to its recent success in the courts in challenging certain charity tax avoidance schemes and to the introduction of the General Anti-Abuse Rule (GAAR), recent changes to the fit and proper person test

for charities, and the new accelerated payments regime as weapons in its armoury against the use of charities as tax avoidance vehicles. The implication is that more anti-avoidance measures may not currently be necessary.

Gift Aid – digital giving and community amateur sports clubs

The Finance Bill 2015 will introduce legislation to establish a structure to allow non-charity intermediaries (such as text donation operators or websites) to play a role in collecting Gift Aid and managing the declarations on behalf of charities.

HM Treasury will publish draft regulations, during the passage of the Finance Bill 2015, designed to give intermediaries a greater role in administering the Gift Aid declaration and setting out the accompanying regulatory framework. It has also established a working group on Gift Aid promotion and to explore how the Gift Aid declaration can best be worded and presented to maximise take-up while protecting donors, charities and public funds against claims made in error.

Stamp duty land tax (SDLT): charities relief

The Finance Bill 2014 includes provisions to clarify the circumstances in which relief from SDLT where a charity purchases property jointly with a non-charity. When the Bill is enacted the intention is that a charity will be able to claim SDLT relief on the proportion of the purchase that is attributable to it. The Finance Bill was published on 27 March 2014 and no material changes were made to the draft legislation.

Charities relief: A reminder

Charities relief from Stamp Duty Land Tax (SDLT) applies when a charity or a charitable trust, purchases an interest in land and satisfies two conditions: **1.** they intend to hold the land for qualifying charitable purposes; and **2.** the transaction hasn't been entered into to avoid SDLT.

What if a charity wants to acquire land with a non-charity?

The Government have confirmed the introduction of legislation to make it clear that partial relief from SDLT will be available where a charity purchases an interest in land jointly, as tenants in common, with a non-charity purchaser. The charity will be able to claim relief on the proportion of the purchase attributable to it.

The legislation follows the Court of Appeal's judgement in the case of *The Pollen Estate Trustee Company Limited and Kings College London v HM Revenue and Customs*.

The changes in the Finance Bill 2014 confirm that partial relief will apply as follows:-

- where a charity purchases an interest in land jointly, as tenants in common, with a non-charity purchaser, relief will be available to the extent that the purchaser is a charity on condition that the charity intends to hold its share of the property for qualifying charitable purposes;
- the amount of relief will be based on the lower of the proportion of the total chargeable consideration paid by the charity, or any person connected with them, or the proportion of the chargeable interest held by the charity;
- SDLT in respect of the non-charity purchaser's share in the land will be chargeable at the rate applicable to total consideration paid by both the charity and the non-charity or any persons connected with them; and
- the transaction must not have been entered into to avoid SDLT.

The Finance Bill 2014 is still waiting to receive Royal Assent to become law. However, in light of the judgment in the above case, HM Revenue & Customs have posted an article on their website inviting claims for any overpaid SDLT from charities which purchased a property jointly with a non-charity purchaser and satisfied the relevant conditions but did not claim the relief. Relief is limited to circumstances where the charity used the greater part of its share in the property for a charitable purpose. Where a charity has already submitted an SDLT return, they would claim the relief in an amendment to the return. Please note that there is a time limit: amendments can be made no

later than 12 months after the filing date for the return. Therefore, if you think these circumstances may apply to you, you should investigate this as soon as possible.

What if a charity is buying property which will only be partly used for charitable purposes?

SDLT relief may still be available where the greater part of the property (i.e. 51% or more of the monetary value) is going to be used for qualifying charitable purposes.

For example, a charity buys a 3 storey building and immediately disposes of the first and second floors but keeps the ground floor for charitable purposes. If the ground floor is worth more than 51% of the overall monetary value of the building, the charity will still be able to claim charities relief even though it has disposed of the first and second floors for non-charitable purposes.

Clawback

Where a charity claims charities relief from SDLT (be it full or partial relief), they need to remember that it is possible for the relief or an appropriate proportion of the relief to subsequently be withdrawn and for SDLT to become payable if they still hold the chargeable interest acquired under the relevant transaction or a chargeable interest derived from it and certain conditions are satisfied within 3 years of the transaction for which the relief was claimed. These conditions include:

1. The purchaser(s) cease to be established for charitable purposes only; and/or
2. The property ceases to be used for charitable purposes;

For example, a charity buys 5 residential units for £100,000 each, intending to sell 2 units on the open market and to keep back the other 3 for charitable purposes. When it acquires them, it will claim charities relief on the £500,000 purchase price as it intends to keep back more than 51% of the monetary value of the properties for charitable purposes. When the charity sells the 2 units, there will be a clawback on the apportioned value of the 2 units (i.e. £200,000). **SDLT is paid at the rate applicable to the total initial consideration, ie £500,000.** Therefore, the SDLT is paid at 3% of £200,000 giving a clawback tax SDLT bill of £6,000.

Alison Munro



Information

If you have any queries on any issues raised in this newsletter, or any charity matters in general please contact Gerry Morrison on (01904) 625790 or email gerry.morrison@rollits.com

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful.

If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

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