



Imperial College Union

Year ended 31 July 2019

Audit Findings Report

Audit / Tax / Advisory / Risk

Smart Decisions. Lasting value.



The Trustees of Imperial College Union
Imperial College Union
Beit Quadrangle
Prince Consort Road
London
SW7 2BB

September 2019

Dear Trustees

Audit for the year ended 31 July 2019

Following the completion of our audit fieldwork on the financial statements of Imperial College Union for the year ended 31 July 2019 we have pleasure in submitting our Audit Findings Report setting out the significant matters which have come to our attention during our audit of which we believe you need to be aware when considering the financial statements. The matters included in this report have been discussed with Imperial College Union's management during our audit and at our closing meeting on 20 September 2019. Malcolm Martin and Neha Gandhi have seen a draft of this report and we have incorporated their comments and/or proposed actions where relevant.

We would like to express our appreciation for the assistance provided to us by the finance team and the other staff at the charity during our audit.

Use of this report

This report has been provided to the Finance and Audit Committee to consider and ratify on behalf of the Board of Trustees, in line with your governance structure. We accept no duty, responsibility or liability to any other parties, since this report has not been prepared, and is not intended, for any other purpose. It should not be made available to any other parties without our prior written consent.

Yours sincerely

Crowe U.K. LLP

Contents	Page
1. Audit overview	1
2. Significant matters from our audit	3
3. Other matters from our audit	5
4. Systems and controls issues	7
5. Update from last year	9
6. Reporting audit adjustments	11
Appendix 1 - Fraud and error	12
Appendix 2 - The Charity Governance Code	14
Appendix 3 - External developments	17
Appendix 4 - Non Profits events, courses and briefings	27

1. Audit overview

Audit scope and approach

Our audit work has been undertaken for the purposes of forming our audit opinion on the financial statements of the Imperial College Union prepared by management with the oversight of the trustees and has been carried out in accordance with International Standards on Auditing (UK) ('ISAs').

Our work combined substantive procedures (involving the direct verification of transactions and balances on a test basis and including obtaining confirmations from third parties where we considered this to be necessary) with a review of certain of your financial systems and controls where we considered that these were relevant to our audit. No restrictions or limitations were placed on our work.

Communicating significant findings from our audit

We are required by ISAs to communicate with the trustees as "those charged with governance" various matters from our audit including:

- our views about significant qualitative aspects of the charity's accounting practices, including accounting policies, accounting estimates and financial statement disclosures,
- significant difficulties, if any, encountered during the audit,
- any significant matters arising during the audit and written representations we are requesting,
- circumstances that affect the form and content of our auditor's report, if any, and
- any other significant matters arising during the audit that, in our professional judgment, are relevant to the oversight of the financial reporting process.

We have included comments in relation to the above where relevant in the subsequent sections of this report.

We also report to you any significant deficiencies in internal control identified during our audit which, in our professional judgment, are of sufficient

importance to merit your attention. We have reported a number of matters relating to the charity's systems and controls in Appendix 1.

You should note that our evaluation of the systems of control at Imperial College Union was carried out for the purposes of our audit and accordingly it is not intended to be a comprehensive review of systems and processes. It would not necessarily reveal all weaknesses in accounting practice or internal controls which a special investigation might highlight, nor irregularities or errors not material in relation to the financial statements.

Audit completion

We have substantially completed our audit in accordance with our Audit Planning Report which was sent to you and the senior management team in August 2019, subject to the matters set out below.

- Completion of the post-Balance Sheet events review.
- Review of the final financial statements.
- Receipt of the signed letter of representation.

The final three items we have identified as outstanding are work we usually carry out just prior to us signing our audit report.

We will report to you orally in respect of any modifications to the findings or opinions contained in this report that arise on completion of the outstanding matters. On satisfactory completion of the outstanding matters, we anticipate issuing an unmodified audit opinion on the truth and fairness of the financial statements.

Significant audit matters

In Section 2 we have also discussed in detail the findings from our work in relation to the following matters.

- Income recognition
- Management override of controls
- Valuation of the USS and SAUL pension scheme deficit liability

Materiality and identified misstatements

As we explained in our Audit Planning Report, we do not seek to certify that the financial statements are 100% correct; rather we use the concept of “materiality” to plan our sample sizes and also to decide whether any errors or misstatements discovered during the audit (by you or us) require adjustment. The assessment of materiality is a matter of professional judgement but overall a matter is material if its omission or misstatement would reasonably influence the economic decisions of a user of the financial statements.

The audit materiality for the financial statements set as part of our audit planning took account of the level of funds held by Imperial College Union and was set at approximately 2% of total assets. We have reviewed this level of materiality based on the draft financial statements for year ended 31 July 2019 and are satisfied that it continues to be appropriate.

We also report to you any unadjusted individual errors other than where we consider the amounts to be trivial, and for this purpose we have determined trivial to be £5,000.

We are pleased to report that there are no remaining unadjusted items identified from our audit in excess of the above trivial limit.

Ethical Standards

We are required by the Revised Ethical Standard 2016 issued by the Financial Reporting Council (‘FRC’) to inform you of all significant facts and matters that may bear upon the integrity, objectivity and independence of our firm.

Crowe U.K. LLP has procedures in place to ensure that its partners and professional staff comply with both the Revised Ethical Standard 2016 and the

Code of Ethics adopted by The Institute of Chartered Accountants in England and Wales.

As explained in our audit planning report, in our professional judgement there are no relationships between Crowe U.K. LLP and Imperial College Union or other matters that would compromise the integrity, objectivity and independence of our firm or of the audit partner and audit staff. We are not aware of any further developments which should be brought to your attention.

Legal and regulatory requirements

In undertaking our audit work we considered compliance with the following legal and regulatory requirements, where relevant.

- Charities Act 2011
- The Charities (Accounts and Reports) Regulations 2008
- Financial Reporting Standard 102 (FRS 102)
- The Charities SORP (FRS102)

Financial statements

The trustees of Imperial College Union are responsible for the preparation of the financial statements on a going concern basis (unless this basis is inappropriate). The trustees are also responsible for ensuring that the financial statements give a true and fair view, that the process your management go through to arrive at the necessary estimates or judgements is appropriate, and that any disclosure on going concern is clear, balanced and proportionate.

2. Significant matters from our audit

We reported in our Audit Planning Report a number of areas we identified as having specific audit risk including the potential risk from management override of controls which auditing standards deem to be a significant risk for all audits. We have commented below on the results of our work in these areas as well as on any key additional risks, judgements or other matters in relation to the financial statements of Imperial College Union identified during our audit.

2.1 Income recognition

As noted in our planning report, the key risks in this area have been identified as follows.

- Completeness (has all income due been appropriately recognised in the period?).
- Benefit (has income been recognised in the appropriate period?).
- Fund allocation (have grant restrictions on the use of the income been appropriately captured in the financial statements?).
- Accuracy (where income is owed at year end, is it likely to be received or should it be provided against?).

We performed the following testing as part of our audit work:

- Analytically reviewed income balances year on year to ensure movements were in line with expectation and also our understanding.
- Performed detailed testing on a sample of income streams in the year.
- Agreed grant income balances to external confirmations.
- Reviewed deferred income balances.

No issues have been noted from the testing carried out.

2.2 Management override of controls

Auditing standards require us to consider as a significant audit risk areas of potential or actual management override of controls. In completing our audit we have therefore considered the following matters.

Significant accounting estimates and judgements

We were advised at the planning meeting that no significant estimates were expected to be employed in the production of the year end numbers and we can confirm that this remains the case.

Controls around journal entries and the financial reporting process

We reviewed and carried out sample testing on the charity's controls around the processing of journal adjustments (how journals are initiated, authorised and processed) and the preparation of the annual financial statements. We also considered the risk of potential manipulation by journal entry to mask fraud.

We did not identify any instances of management override of controls or other issues from our sample testing of Imperial College Union journals. However, we note that journal processing can be an area of potential risk and it is good practice to include consideration of this within the overall Imperial college Union risk assessment.

Significant transactions outside the normal course of business

We are required to consider the impact on the financial statements if there are any significant transactions occurring outside of the normal course of the charity's business.

No such transactions were notified to us by management, nor did any such transactions come to our attention during the course of our work.

2.3 USS and SAUL pension scheme deficit

We have reviewed the assumptions used in the calculation of the FRS 102 pension liabilities in relation to the USS pension scheme deficit payments as the SAUL deficit is now nil. The discount rate used has been based on Mercer guidance and appears appropriate and in line with those used by similar organisations for similar pension schemes. The modeller template used was based on the 2015 valuation however, there has been a new modeller issued in this year following the 2018 valuation of the USS pension scheme. The main changes on this new modeller for calculating the liability is the increase in deficit contributions percentage increasing from 2.1% to 5% and the length of the deficit plan from 2031 to 2034. We note you have applied these 2 factors to the previous template to update the calculation and we have compared the increase % in liability seen to other entities in the USS pension plan to ensure the calculation is reasonable. We recommend the latest USS modeller template is used going forward.

The recalculation has resulted in an increase in the pension liability by £180,180. This has been included in the schedule of adjust items later on in this report and has been included in the Financial Statements.

3. Other matters from our audit

In addition to matters relating to the key areas of accounting and audit focus as reported in Section 2, we have also noted the following matters from our audit work which we should bring to your attention.

3.1 Payroll

Payroll is the largest single expenditure item for the Union.

This assessment must be in respect of a period of at least one year from the date of approval of the financial statements.

As part of our audit we carried out the following work:

- Reviewed the controls in place over monthly processing including the reconciliation of the payroll to the nominal ledger;
- Reconciled and agreed monthly payroll reports to the nominal ledger and draft accounts.
- Verified a sample of staff between the payroll and other HR records and agreed their costs to supporting documentation on a sample basis.
- Recalculated the PAYE and NI for a sample of employees.

No issues were noted from the audit work carried out.

3.2 Going concern

Under ISAs (UK) the revised audit report includes specific references to going concern. The trustees' assessment that the going concern basis is appropriate has increased emphasis and importance and this was therefore be an area to which we are required to pay particular attention.

This assessment must be in respect of a period of at least one year from the date of approval of the financial statements.

As part of our work on going concern, we:

- Reviewed the period used by Trustees to assess the ability of Imperial College Union to continue as a going concern.

- Examined budgets and forecasts prepared by management covering the period of the going concern assessment to ensure these are appropriate.
- Reviewed any other documentation which the Trustees use in assessing the going concern status and made any necessary enquiries of management.

No issues were noted from our work done carried out.

3.3 Balances owed between the College and Union

It was noted during the audit that there was a debtor balance labelled 'H Bar debtor' which is money banked by the College but owed to the Union totalling £21,687. This balance has been included in other debtors rather than being included within the College balance. While this may not be a normal transaction which goes through the Union/College 'intercompany' balance code in the sense of invoices between the two entities, this is still money owed from one entity to the other and therefore should be classified as such in the accounts. However as it is not a material amount and is just a reallocation within the balance sheet, no adjustment is deemed required in respect of this.

The main 'intercompany' balance included in the accounts as a creditor for amounts due to Imperial College at the year end is £988,586. This balance has been agreed to the College records with a difference of £38,978 which has been further reconciled by management to a difference of £414.

We recommend that these balances are agreed with the College at the year end especially given this year the College are not consolidating the Union's figures into the College accounts and so no reconciliation of the balances was carried out.

3.4 Investments

Investments – balance sheet

Investments in the M&G Charifund had been disinvested in the year and £1.5mn was invested in Rathbones.

We note that the Rathbones investments are accounted for on a cash basis with the market value reflected at the year end. The accounting treatment to account for cash investment and disinvestment through the bank is acceptable for the purposes of the investments note in the accounts. Most clients would also maintain a separate record of the individual investment holdings which tracks back to the holdings held by Rathbones in their investments report.

Investments have been increased to reflect the market value at the year end during the audit and is included in adjusted items later in this report.

Investments – investment income

Investment income is paid into the Rathbones income account, transferred to the capital accounts and then each quarter £7,500 is paid into the Unions bank account. Any shortfall of income below £7,500 in any quarter is shown as return of capital instead.

The total investment income included in the Rathbone income account is £29,666 and the investment income included in the SOFA in relation to Rathbones is £21,909. The difference of £7,757 is an understatement of investment income and is not material to the financial statements. As the MV of the investment portfolio is carried out at the year end, this means the opposite side of the understatement in income is an overstatement in the change in market value in the SOFA. Therefore no overall net effect on the SOFA. No adjustment has been made in respect of this.

4. Systems and controls issues

We have set out below certain potential improvements to the charity's processes and controls which we noted during our audit work and which we believe merit being reported to you.

Our evaluation of the systems of control at Imperial College Union was carried out for the purposes of our audit and accordingly it is not intended to be a comprehensive review of your business processes. It would not necessarily reveal all weaknesses in accounting practice or internal controls which a special investigation might highlight, nor irregularities or errors not material in relation to the financial statements.

In order to provide you with a clearer picture of the significance of issues raised, we have graded the issues raised by significance/priority before any corrective actions are taken. We have also included as a separate appendix a brief update on the matters we raised last year.

High	These findings are significant and require urgent action.	<i>(0 comments in this category)</i>
Medium	These findings are of a less urgent nature, but still require reasonably prompt action.	<i>(2 comments in this category)</i>
Low	These findings merit attention within an agreed timescale.	<i>(1 comments in this category)</i>

Audit finding and recommendation	Priority	Management response
<p>1. Income journals</p> <p>When testing the Summer Ball income it was found that one line of the income journal had not been posted in error. Instead the overage line in the journal incorporated the amount that had not been posted to the Yoyo debtor.</p> <p>It was also found that income received through card payments at the Summer Ball could not be followed from the journal in the system to the bank statement, due to issues with the number of tills used, and the fact that the event goes on overnight so money is received in different stages despite the tills recognising all income as one day.</p> <p>We recommend that greater care is taken when posting journals, and also that processes are put in place to ensure that income posted to the bank in the accounting software can be identified in the bank.</p>		<p>The £235.05 not posted to the Yoyo debtor account was a genuine human error, no other errors were found. However, we shall be extra vigilant when reviewing and journaling the income.</p> <p>Normally the income is very easily traceable to the bank. However, the Summer Ball income has always been a challenge due to the number of the tills being required and the funds being deposited on the same day. We will prepare a schedule for this year's ball so that the income is easily tracked to the bank figure.</p>

Audit finding and recommendation	Priority	Management response
<p>2. Supplier Statement Reconciliations</p> <p>When testing purchase ledger balances to supplier statements, it was noted for one balance that the balance per the system was higher than the supplier statement by £17k. Following further work by management the majority of this difference was due to credit notes on the supplier statement which were not on the system. Whilst this figure was not material and the balance in the accounts is potentially overstated, we recommend that any credit notes due are chased up and updated on the system.</p> <p>Regular reconciliations to supplier statements would provide comfort over balances due in the accounts.</p>		<p>The £17k worth of credit notes have been chased up numerous times but from past experience the supplier in question always forwards these credit notes a few months after appearing on the statement. We are continuing to chase every such credit note.</p>
<p>3. Internal audit report</p> <p>During the year an internal audit report was compiled by KPMG. As part of our audit work we reviewed this report and looked at whether the recommendations had been taken on board.</p> <p>One of the points noted was regarding the investigation of cash differences in the Union tills that were above the given threshold, in that this was not happening. However when carrying out our income testing which includes reviewing the cashier summaries, we found that for the samples we selected they were signed and evidenced documentation to say investigations had taken place.</p> <p>Therefore we are satisfied that the recommendations given in the report are being taken on board. We note that other issues such as cash security, bank reconciliation reviews etc. that were not due to be completed by this point are in progress and we will monitor this next year.</p>		<p>It was reassuring that auditors found no issues in their cash income testing and any differences between the cash and the reports had been evidenced as investigated. Independent checks are carried out by the Finance Manager and the Operations Manager.</p> <p>The balance sheet reconciliations such as the bank reconciliations and petty cash have been reviewed every month and signed off.</p>

5. Update from last year

We have set out below the systems and control issues on which we reported after our audit last year together with an update on how the points raised have been addressed including information on the progress made at the time of the audit of the 2018 financial statements.

Recommendation fully implemented or no longer relevant	
Recommendation partially implemented	
No progress on recommendation	

Please note that these colour codings are based on the status of the actions taken rather than the severity of the observation which is shown against the observation itself.

Observations in 2018	Update 2019
<p>1. Old items on the bank reconciliation</p> <p>It was found as part of the review of the bank reconciliations that there were a significant number of old reconciling items with £30,439 of uncleared payments and £22,565 uncleared deposits greater than 1 month.</p> <p>While the net effect of these amounts are immaterial it recommended that monthly reconciliations identify any aged balances and the progress of these to ensure they are genuine reconciling items.</p>	<p>While the majority of old transactions noted previously have been cleared from the bank reconciliation, it should be noted that there are still unreconciled items dating back to January 2019 (24 receipts and 38 payments dated Jan/Feb 19). Uncleared payments at the year end totalled £201,180 and uncleared deposits totalled £224,550. The majority of these items are in relation to PDQ postings and cash banked which needs matching,</p> <p>Whilst we note the improvements in clearing the old unreconciled items from 2018 has been made, this matter remains open and we will monitor this next year.</p> <p>Management response:</p> <p>Matching the PDQ postings with those banked has been a laborious task, hence not being able to clear all the outstanding aged transactions. We intend to clear these all as soon as possible and going forwards will write off the underage/overage every month.</p>

Observations in 2018		Update 2019
<p>2. Unidentified income held as a creditor</p> <p>It was identified that included within other creditors is a balance of £75,639 of income that has been received but not identified as union income. This account therefore is being used as a suspense account and includes balances from the earliest of 2013. This balance has increased by £25k in the year and whilst immaterial in the current year if not reconciled will likely become material in future years.</p> <p>Depending on the nature of these items there may be VAT implications.</p> <p>It is recommended that this is fully reviewed to ensure that all income is correctly received and balances are chased up regularly to ensure this account is cleared.</p>		<p>This balance has reduced by approximately half during the year following work done to identify as much income as possible and also some older unidentified transactions being written off.</p> <p>We note the improvements made on this account and will continue to monitor this next year. Matter remains open.</p> <p>Management response:</p> <p>We intend to further investigate the existing unidentified receipts and post them appropriately. We intend to limit postings to these accounts by ensuring the clubs and societies etc are aware that each deposit must have a description/reference and continuously chasing them up on these.</p>
<p>3. Bank account signatories</p> <p>It was identified that there is a bank account holding £25k on the trial balance that the union does not hold documentation for.</p> <p>The signatories on this account have not been reviewed for several years and as a result no signatories for the account currently work at the union.</p> <p>We recommend that all signatories are reviewed yearly for all accounts to ensure only staff who work at the union are included and all bank account documentation will be available.</p>		<p>It was noted that this bank account has now been closed and the money transferred into another Union account.</p> <p>This matter is now closed.</p>

6. Reporting audit adjustments

International Standards on Auditing (UK) require that we report to you all misstatements which we identified as a result of the audit process but which were not adjusted by management, unless those matters are clearly trivial in size or nature.

Our audit approach is based on consideration of audit materiality as explained in section 1 of this report. We determine materiality for the purposes of the charity's statutory reporting by our judgement as to what adjustments would influence the readers' perceptions of the financial statements. We do not therefore seek to review all immaterial amounts.

For the purpose of reporting non-trivial items identified as a result of our audit work which have not been adjusted in the financial statements we set out in our Audit Planning Report that we would report unadjusted misstatements greater than £5,000 unless they are qualitatively material at a lower amount.

A summary of adjusted items for the company are listed below.

	Surplus increase /(decrease)	Assets increase /(decrease)	Liabilities increase /(decrease)	Reserves increase /(decrease)
	£	£	£	£
Result per trial balance provided on day 1 of audit	(374,512)			
Client adjustments (College balance reallocation from trade debtors, VAT and investment realised and unrealised gains)	87,315	79,798	(7,517)	-
Increase in USS pension deficit liability following the 2018 valuation of the Plan	(180,180)		180,180	
Total adjustments	(92,865)	79,798	172,663	-
Revised result per the final financial statements	(467,377)			

We are pleased to report that there are no remaining unadjusted items identified from our audit in excess of the above trivial limit.

Appendix 1 - Fraud and error

In our Audit Planning Letter, we explained that the responsibility for safeguarding the assets and for the prevention and detection of fraud, error and non-compliance with law or regulations rests with the trustees of Imperial College Union

The trustees should be aware that the Charity Commission provides guidance (updated in January 2018) on how to protect your charity from fraud including information about fraud, how to spot it and what you can do to protect against it - <https://www.gov.uk/guidance/protect-your-charity-from-fraud> .

In accordance with International Auditing Standards, we planned our audit so that we have a reasonable expectation of detecting material misstatements in the financial statements or accounting records (including any material misstatements resulting from fraud, error or non-compliance with law or regulations).

However, no internal control structure, no matter how effective, can eliminate the possibility that errors or irregularities may occur and remain undetected. In addition, because we use selective testing in our audit, we cannot guarantee that errors or irregularities, if present, will be detected. Accordingly our audit should not be relied upon to disclose all such misstatements or frauds, errors or instances of non-compliance as may exist.

As part of our audit procedures we made enquiries of management to obtain their assessment of the risk that fraud may cause a significant account balance to contain a material misstatement. Usually fraud in the charity sector is not carried out by falsifying the financial statements. Falsifying statutory financial statements usually provides little financial benefit, as compared to say a plc where showing a higher profit could lead to artificial share prices or unearned bonuses. However falsifying financial statements can be used to permit a fraud or to avoid detection. As a generality charities represented by its management and its trustees do not actively try to falsify financial statements as there are not the same incentives to do so. In the charity world fraud is usually carried out through misappropriation or theft.

We have reviewed and discussed the accounting and internal controls systems management has put in place to address these risks and to prevent and detect error. However, we emphasise that the trustees, Audit Committee and

management should ensure that these matters are considered and reviewed on a regular basis.

We have included the following statements in the letter of representation which we require from the trustees when the financial statements are approved.

- The trustees acknowledge their responsibility for the design and implementation of internal control to prevent and detect fraud and errors.
- The trustees have assessed that there is no significant risk that the financial statements are materially misstated as a result of fraud.
- The trustees are not aware of any fraud or suspected fraud affecting the charity involving management, those charged with governance or employees who have a significant role in internal control or who could have a material effect on the financial statements.
- The trustees are not aware of any allegations by employees, former employees, regulators or others of fraud, or suspected fraud, affecting the charity's financial statements.

We draw your attention to bullet point 2 above which presupposes that an assessment has been made. We have not been made aware of any actual or potential frauds which could affect the 2019 financial statements, or in the period since the previous year end.

We emphasise that this section is provided to explain our approach to fraud and error, but the responsibility to make and consider your own assessment rests with yourselves.

Considering risks of fraud

The following provides further information on the three kinds of fraud that charities such as Imperial College Union should consider.

a) Frauds of extraction

This is where funds or assets in possession of the charity are misappropriated. Such frauds can involve own staff, intermediaries or partner organisations since they require assets that are already in the possession of the entity being

extracted fraudulently. This could be by false invoices, overcharging or making unauthorised grant payments.

Essentially such frauds are carried out due to weaknesses in physical controls over assets and system weaknesses in the purchases, creditors and payments cycle. The cycle can be evaluated by considering questions such as who authorises incurring a liability and making a payment. On what evidence? Who records liabilities and payments? Who pays them and who checks them?

The close monitoring of management accounts, ledger entries and strict budgetary controls are also generally seen as an effective way of detecting and deterring frauds in this area.

Staff should be made aware of the increasing use of mandate fraud. This is where when the fraudster gets the organisation to change a direct debit, standing order or bank transfer mandate by purporting to be a supplier or organisation to which the charity make regular payments.

Insufficient due diligence around requests to amend supplier or payroll details has led to payments to unauthorised individuals so the importance of sufficient checks in these areas is of increasing importance.

Some charities have also been victims of what is being termed CEO fraud, although it does not involve the CEO. In this case cyber criminals spoof company email accounts and impersonate executives to try and fool an employee in accounting or HR into executing unauthorised wire transfers or sending out confidential information.

This type of phishing scam is a sophisticated scam targeting businesses working with foreign suppliers and/or businesses that regularly perform wire transfer payments. The scam is carried out by compromising legitimate business e-mail accounts through social engineering or computer intrusion techniques to conduct unauthorised transfers of funds. Action Fraud, the UK's national fraud and cyber-crime reporting centre's website explains:

"CEO fraud will typically start with an email being sent from a fraudster to a member of staff in a company's finance department. The member of staff will be told by the fraudster who is purporting to be a company director or CEO that they need to quickly transfer money to a certain bank account for a specific reason. The member of staff will do as their boss has instructed, only to find that they have sent money to a fraudster's bank account."

The fraudster will normally redistribute this money into other mule accounts and then close down the bank account to make it untraceable. Out of the £32 million reported to be lost by businesses to CEO fraud only £1 million has been able to be recovered by the victims. This is due to businesses taking too long to discover that they have been the victim of fraud and the lost money already being moved by fraudsters into mule accounts. Most businesses reported initially being contacted via emails with gmail.com and yahoo.com suffixes. (Note that: in some cases the email comes from a hacked email account).

How can businesses protect themselves?

- *Ensure all staff, not just finance teams, know about this fraud.*
- *Have a system in place which allows staff to properly verify contact from their CEO or senior members of staff; for example having two points of contact so that the staff can check that the instruction which they have received from their CEO is legitimate.*
- *Always review financial transactions to check for inconsistencies/errors, such as a misspelt company name.*
- *Consider what information is publicly available about the business and whether it needs to be public.*
- *Ensure computer systems are secure and that antivirus software is up to date."*

All employees should exercise real scepticism and not make any payments which are not properly supported and outside the normal payment mechanisms.

b) Backhanders and inducements

There is also an inherent risk that individuals who are able to authorise expenditure or influence the selection of suppliers can receive inducements to select one supplier over the other. This risk can be mitigated by robust supplier selection and tendering procedures.

c) Frauds of diversion

This is where income or other assets due to Imperial College Union are diverted before they are entered into the accounting records or control data. Essentially, it is easy to check what is there but very difficult to establish that it is all there.

Appendix 2 - The Charity Governance Code

The Governance Code for charities was published in July 2017. Although not a legal or regulatory requirement, the Code explains that it is a practical tool to help charities and their trustees develop high standards of governance. The Code sets the principles and recommended practice for good governance and is deliberately aspirational: some elements of the Code will be a stretch for many charities to achieve. It is important that trustees discuss the Code's principles and recommended practice and make well-considered decisions about how these should be applied in their charity.

In its statement about the code the Charity Commission has said

“The bottom line is, good governance is no longer an optional extra. It’s essential to charities’ effectiveness and probably their survival too. Charities need to be able to demonstrate that they take it seriously, allowing it to change the way they operate.”

The Charity Governance Code represents a standard of good governance practice to which all charities should aspire. We encourage all charities to read, follow and apply it proportionately to their circumstances. And if you sign up to the code, go public about it on your website or your annual report. Be prepared to stand up and be counted, and see the difference that makes.”

Apply or explain

The Code is designed as a tool to support continuous improvement. Charity boards that are using this Code effectively will regularly revisit and reflect on the Code's principles. All trustees are encouraged to meet the principles and outcomes of the Code by either applying the recommended practice or explaining what they have done instead or why they have not applied it. The Code does not use the phrase 'comply or explain', which is used by some other governance Codes, because meeting all the recommended practice in this Code is not a regulatory requirement.

Charities that adopt the Code are encouraged to publish a brief statement in their annual report explaining their use of the Code. It is anticipated that this statement will be a short narrative rather than a lengthy 'audit' of policies and procedures.

Foundation for good governance

Compliance with the law is an integral part of good governance. The Code does not attempt to set out all the legal requirements that apply to charities and charity trustees, but it is based on a foundation of trustees' basic legal and regulatory responsibilities. This assumes that all trustees:

- are committed to their charity's cause and have joined its board because they want to help the charity deliver its purposes most effectively for public benefit,
- recognise that meeting their charity's stated public benefit is an ongoing requirement,
- understand their roles and legal responsibilities, and, in particular, have read and understand the Charity Commission's guidance 'The Essential Trustee' (CC3) and their charity's governing document, and
- are committed to good governance and want to contribute to their charity's continued improvement.

Culture and behaviour

We have carried out a number of governance reviews for charities and our experience is that there is much more than codes and standards that need to be considered. The Code recognises that appropriate behaviour and culture are as important as structures and processes and that it is important to get the right balance between appropriate oversight and day-to-day management.

Board members should delegate where possible, but in accepting their positions board members take on duties and responsibilities that they cannot abdicate. Their responsibility is a collective one, which is more readily satisfied if there is as much requisite experience presented around the table as is consistent with the effective working of the group. If the board believes that the requisite skills do not exist, it should re-evaluate its composition. However, it is important to recognise that existing skills within both the board and executive management team should be complementary and not necessarily duplicated.

Larger organisations are usually in the position where the board has had the foresight to appoint experienced and expert management. This sometimes causes a dilemma, and the charity board members' position is in stark contrast to that of the non-executive director of a company in the private sector who shares their responsibilities with their executive colleagues.

It is the reaction to the starkness of their position that often results in charity board members becoming over-involved in operational management to the detriment of their critical perspective. In some ways, the greater the competence and professionalism of management, the greater the challenge and the more difficult the role of the board.

The charity sector recognises the need for boards to empower senior management and for management to empower staff. Empowerment is important, but empowerment must be balanced with accountability. Too often there is unwarranted expectation that things are being done as they should be done and that good practice is being followed.

Getting the balance right

True empowerment requires an enabling environment, and this means that the organisation must ensure that those it is trying to empower have the aptitude, core competencies, values and skill base to properly use tools, methodologies and policies that must support both accountability and devolved decision-making. True empowerment is possible only when suitably experienced individuals take decisions within their competence and adhere to an agreed framework that does not require constant reference to or follow-up from others. In practice, this is effective only when individuals both follow and rely on clear procedures and policies that set the parameters and framework for decision-making and operations.

True and effective empowerment needs three components: responsibility, authority and accountability. As activities or tasks are delegated to teams or individuals, all three components need to be considered. The correct balance will be achieved only when individuals or teams have a clear understanding of responsibilities, the authority necessary to fulfil these responsibilities and the accountability for the consequences of what they have done or failed to do. This accountability is required not just from management but also from boards.

Getting the balance right is the challenge. While the board holds its brief to remain engaged, board members should take care to avoid over-involvement in the executive function. The board's role is wide and encompasses many different issues that change and evolve over time. No board member should take for granted that established procedures, services and protocols are appropriate for the needs of today and tomorrow. It is by holding this frame that boards can best fulfil their obligations and make the greatest contribution. It is in this stance that their greatest value lies as they create and hold a space that is their true support to management.

The Seven Principles

There are seven Code principles that build on the assumption that charities are already meeting the Foundation for good governance.

Each principle in the Code has a brief description, a rationale (the reasons why it is important), key outcomes (what you would expect to see if the principle were adopted) and recommended practice (what a charity might do to implement the principle). The seven principles are:

1. Organisational purpose

The board is clear about the charity's aims and ensures that these are being delivered effectively and sustainably.

Rationale

Charities exist to fulfil their charitable purposes. Trustees have a responsibility to understand the environment in which the charity is operating and to lead the charity in fulfilling its purposes as effectively as possible with the resources available. To do otherwise would be failing beneficiaries, funders and supporters. The board's core role is a focus on strategy, performance and assurance.

2. Leadership

Every charity is headed by an effective board that provides strategic leadership in line with the charity's aims and values.

Rationale

Strong and effective leadership helps the charity adopt an appropriate strategy for effectively delivering its aims. It also sets the tone for the charity, including its vision, values and reputation.

3. Integrity

The board acts with integrity, adopting values and creating a culture which helps achieve the organisation's charitable purposes. The board is aware of the importance of the public's confidence and trust in charities, and trustees undertake their duties accordingly.

Rationale

Trustees, and the board members collectively, have ultimate responsibility for the charity's funds and assets, including its reputation. Trustees should maintain the respect of beneficiaries, other stakeholders and the public by behaving with integrity, even where difficult or unpopular decisions are required. Not doing this risks bringing the charity and its work into disrepute.

4. Decision-making, risk and control

The board makes sure that its decision-making processes are informed, rigorous and timely, and that effective delegation, control and risk-assessment, and management systems are set up and monitored.

Rationale

The board is ultimately responsible for the decisions and actions of the charity but it cannot and should not do everything. The board may be required by statute or the charity's governing document to make certain decisions but, beyond this, it needs to decide which other matters it will make decisions about and which it can and will delegate.

Trustees delegate authority but not ultimate responsibility, so the board needs to implement suitable financial and related controls and reporting arrangements to make sure it oversees these delegated matters. Trustees must also identify and assess risks and opportunities for the organisation and decide how best to deal with them, including assessing whether they are manageable or worth taking.

5. Board effectiveness

The board works as an effective team, using the appropriate balance of skills, experience, backgrounds and knowledge to make informed decisions.

Rationale

The board has a key impact on whether a charity thrives. The tone the board sets through its leadership, behaviour, culture and overall performance is critical to the charity's success. It is important to have a rigorous approach to trustee recruitment, performance and development, and to the board's conduct. In an effective team, board members feel it is safe to suggest, question and challenge ideas and address, rather than avoid, difficult topics.

6. Diversity

The board's approach to diversity supports its effectiveness, leadership and decision making.

Rationale

Diversity, in the widest sense, is essential for boards to stay informed and responsive and to navigate the fast-paced and complex changes facing the voluntary sector. Boards whose trustees have different backgrounds and experience are more likely to encourage debate and to make better decisions.

The term 'diversity' includes the nine protected characteristics of the Equality Act 2010 as well as different backgrounds, life experiences, career paths and diversity of thought. Boards should try to recruit people who think in different ways, as well as those who have different backgrounds.

7. Openness and accountability

The board leads the organisation in being transparent and accountable. The charity is open in its work, unless there is good reason for it not to be.

Rationale

The public's trust that a charity is delivering public benefit is fundamental to its reputation and success, and by extension, the success of the wider sector. Making accountability real, through genuine and open two-way communication that celebrates successes and demonstrates willingness to learn from mistakes, helps to build this trust and confidence and earn legitimacy.

Appendix 3 - External developments

We have summarised below some of the developments and changes in the charity sector over the recent period which we believe may be of interest and relevant to you. Please note that this information is provided as a summary only and that you should seek further advice if you believe that you have any specific related issues or intend to take or not take action based on any of the comments below.

We issue a regular technical briefing for charities by email. If you would like to receive this please email your details to nonprofits@crowecw.co.uk . Alternatively, these briefings are available in the resource library on [our website](#).

Guidance for charities with a connection to a non-charity

At the end of March 2019 the Charity Commission published their guidance on how to manage and review a charity's connection to a non-charity. The guidance recognises that connections can be for variety of reasons including providing funding and raising funds, saving money, increasing impact, managing risk and furthering a charity's purposes. But overall the purpose of any connection must be to help the charity to make a positive difference for its beneficiaries.

The guidance applies to a wide range of connections between charities and non-charities, including charities which

- have non-charity trading subsidiaries,
- are regularly funded by a non-charity,
- regularly give funding to a non-charity,
- work regularly with a non-charity to deliver services, campaigns or other projects,
- were set up by a non-charity,
- have a non-charity as trustee, or
- have a non-charity as its sole or significant member.

The key objective of the guidance is to help trustees manage their charity's connection with a non-charity in line with the charity's best interests and their legal trustee duties. The guidance is set out to cover 6 principles for managing and reviewing a charity's connections with non-charities.

1. Recognise the risks
2. Do not further non-charitable purposes
3. Operate independently
4. Avoid unauthorised personal benefit and address conflicts of interest
5. Maintain your charity's separate identity
6. Protect your charity

The Commission have emphasised the importance of the guidance and have stated that "*Where the Commission reviews a charity's connection with a non-charity we will expect trustees to have applied this guidance.*" Within the guidance comments are separated between "must" which are legal or regulatory requirements or duties that trustees must comply with and "should" which the Commission regards as good practice and expects trustees to follow and apply to their charity.

It will therefore be important that trustees of charities which have one or more connections with non-charities review this guidance to ensure that they are meeting the principles now expected by the Charity Commission. To help trustees the guidance includes three checklists dealing with different relationships including operating with a subsidiary, charities mainly funded by a non-charity and charities in a regular partnering or other funding relationship.

The guidance can be accessed on the HM.GOV website:

<https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity> .

Legacy notifications to charities

The Ministry of Justice has announced that a new system alerting charities to when they have been left money in wills is to be established by HM Courts and Tribunals Service following a decision to end the current paid for arrangement with Smee & Ford. In an open letter published at the end of January 2019 the Chief Executive of HM Courts & Tribunal Service stated that HMCTS had found that the current arrangements were not consistent with the department's legal duties.

HMCTS has stated that it is working closely with Smee & Ford to ensure that there is as little disruption as possible arising out of these changes over the six months' notice period and has set up. It has also set up a working group which has invited representatives from ACEVO, NCVO, the Institute of Fundraising and the Institute of Legacy Management to look at options to create a new and sustainable arrangement for providing a notification service to charities going forward.

In her latest letter to charities published on 29 May 2019 the Chief Executive of HMCTS notes that *"I am pleased to tell you that that this effort has made good progress and that, while I am not yet in a position to provide details, I am now confident that an interim solution will be in place to deliver the continuity of service your members have sought."*

Details on the changes and related announcements can be seen on the HM.GOV website <https://www.gov.uk/government/collections/notification-of-charitable-bequests>

New research into the legacy fundraising market

In April 2019 Remember A Charity, a consortium of 200 UK charities and part of the Institute of Fundraising, unveiled their UK Legacy Fundraising Market 2019 report which focuses on trends in the legacy fundraising market over the last 10 years.

This research shows that fundraising charities continue to be heavily reliant on income from legacies, which generates 28% of their total voluntary income. It also shows that, although organisations with annual income exceeding £10 million account for the majority (81%) of legacy income, an influx of smaller charities fundraising for legacies is changing the overarching shape of the market.

The report can be seen on the Remember A Charity website <https://cdn.rememberacharity.org.uk/app/uploads/2019/04/UK-Legacy-Marketplace-Summary-Report-Apr-2019-FINAL-v2.pdf>

Assessing risk for charities working internationally

The International Charities Engagement Team at the Charity Commission in May 2019 published a blog looking at the particular risks that are faced by charities working internationally including the application of financial sanctions, greater levels of corruption or criminal activity and the presence of terrorists, proscribed groups or designated entities.

The blog recognises that there is no universally recognised criteria for assessing and determining risk and ultimately each charity must decide what is in the best interest of the charity. However it also emphasise that recent events in 2019 demonstrate how practical the Charity Commission PESTLE analysis tool can be when assessing the risk arising from a range of external factors, and their impact on a charity working internationally.

The blog recommends that charities working internationally should have a dynamic risk assessment process which is conducted regularly and which includes looking at chapter 2 of the Charity Commission Compliance Toolkit which provide guidance on due diligence, monitoring and verifying the end use of charitable funds.

The blog, which includes links to the Compliance Toolkit, can be seen on the GOV.UK website <https://charitycommission.blog.gov.uk/2019/05/03/how-to-assess-risk-for-charities-working-internationally/>.

Protecting your charity from cybercrime

The government's Cyber Security Breaches Survey 2019 revealed that over two thirds of high income charities had recorded a cyber breach or attack in 2018. Of those charities affected, the vast majority (over 80%) had experienced a phishing attack, which are fraudulent emails.

The Charity Commission produced another alert in May 2019 emphasising that all charities should be vigilant to the threat of cybercrime. Charities should make sure appropriate defences are in place and raise awareness with their staff and volunteers.

The National Cyber Security Centre (NCSC) has also produced some useful guidance on how to protect charities from cybercrime. This includes a

separate guide specifically for smaller charities - <https://www.ncsc.gov.uk/collection/charity> and more detailed advice in their Board Toolkit which may be helpful to larger charities - <https://www.ncsc.gov.uk/collection/board-toolkit> .

The alert also emphasises the requirements for prompt, full and frank disclosure of any incidents where charities have fallen victim of cybercrime as part of the serious incident reporting requirements.

Tackling charity fraud

The Fraud Advisory Panel in conjunction with the Charity Commission has published a number of resources on its website to help charity trustees manage the fraud risks faced by their charity.

These resources include a special report by the Fraud Advisory Panel and Charity Commission “Tackling Charity Fraud – Prevention is Better than Cure” together with a related Tackling Charity Fraud checklist.

The website also has a bundle various documents from the Charity Fraud Awareness Week in October 2018 which includes their 10 suggested questions for charity trustees about fraud.

Do we:

1. *Know about our responsibility to protect funds?*
2. *Have a fraud, bribery and corruption policy?*
3. *Understand our financial systems and the data we hold?*
4. *Have regular and frank conversations about fraud?*
5. *Take appropriate steps to know our staff, donors and partners?*
6. *Regularly review and test our financial safeguards?*
7. *Promote fraud awareness and understanding?*
8. *Encourage staff and volunteers to raise concerns?*
9. *Have a plan to respond to fraud?*
10. *Know who to tell if a fraud is discovered?*

The Department for Digital, Culture, Media and Sport also published their cyber security breaches survey for 2018 which shows that 1 in 5 charities suffered a cyber security breach or attack in the last 12 months.

The guidance and other charity fraud related publications are available from the Fraud Advisory Panel website <https://www.fraudadvisorypanel.org/charity-fraud/resources/> .

Charity Ethical Principles

NCVO has developed a set of four ethical principles for the charity sector. The principles provide an overarching framework for voluntary organisations to guide decision-making, good judgement and conduct and aim to support charities, their governing bodies, and those who work and volunteer in and with them to recognise and resolve ethical issues and conflicts.

The principles set out a framework for the ethical execution of charitable purpose, regardless of the charity’s size, type or area of operation and are aimed at helping charities in their decision making and in developing relevant policies and procedures. They are intended to be complimentary to sector codes such as the Charity Governance Code as well as individual charities’ codes of conduct.

The four principles are Beneficiaries First, Integrity, Openness, and Right to be Safe. For each principle there are 3 or 4 suggested actions for charities to help them to uphold the principle.

Although endorsement of these principles is voluntary, all charities are encouraged to reflect on the principles in their work and decision making with the principles being viewed as a benchmark of good practice.

More information on this can be seen on the NCVO website https://www.ncvo.org.uk/images/documents/policy_and_research/ethics/Charity-Ethical-Principles.pdf .

Charity Digital Code

The Charity Digital Code of Practice, funded by Lloyds Banking Group and the Co-op Foundation, was launched in November 2018 and aims to help charities increase impact, develop skills and improve sustainability through the use of digital. Digital is defined as “*Applying the culture, practices, processes & technologies of the Internet era to respond to people’s raised expectations*”.

The Code is intended to be used by charities to help benchmark their progress in digital and to inform key decisions in this area. It is broken down into 7 key principles with explanations of why each principle matters, what success looks like and suggested best practice set out as a simpler version for smaller charities (annual income under £1m) and a more extensive set of best practice guidance for larger charities. The Code uses the terms 'must'

and 'should' to indicate what is seen as the minimum standard of good practice and 'could' to indicate enhanced best practice.

Although adoption is voluntary, the developers of the Code want it to be widely used across the sector and have therefore made it free to access to encourage charities to reuse and share it for non-commercial purposes.

The full code can be accessed from its website <https://doit.life/charity-digital-code>.

New Code of Fundraising Practice

The Fundraising Regulator on 6 June 2019 launched a new Code of Fundraising Practice which will come into effect in October 2019 and has been published following a 10 week consultation at the end of 2018 which sought views from the sector about how to make it simpler.

The new Code has been structured in three parts, with Part 1 dealing with Standards which apply to all fundraising, Part 2 with Standards which apply to working with others and Part 3 with Standards which apply to specific fundraising methods.

The Code continues to set out the responsibilities that apply to any fundraising carried out by charitable institutions and third-party fundraisers in the UK and is supported throughout by four values:

- Legal – meeting the requirements of the law
- Open - being open with the public about fundraising processes
- Honest - acting with integrity not misleading the public about the cause or the way a donation will be used
- Respectful - demonstrating respect whenever fundraisers have contact with any member of the public.

The Code makes it clear that charities must make sure they meet the standards in the code and must be able to justify the decisions they make. They must make their staff and volunteers aware of the standards and adequately train and monitor them if the standards are relevant to their responsibilities.

The new code can be seen on the Fundraising Regulator website <https://www.fundraisingregulator.org.uk/more-from-us/resources/code-fundraising-practice-october-2019>

Fundraising Preference Service suppression requests

The Fundraising Regulator has, from 1 March 2019, reduced the time available to action a suppression request from 28 days to 21 days.

From 1 March 2019 any person that makes a request on the service will be told the charity has 21 days to action their request. They will then be able to make a 'follow-up' request after 21 days (previously 28 days) if they still receive direct marketing from the charity. The Regulator will consider complaints about direct marketing received by individuals 28 days after the first suppression request was made.

This change has been made so that the Regulator can remind charities who haven't responded to the request after 21 days to do so within the month or risk breaching the law. Charities should ensure that their internal processes have been updated as necessary to allow the charity to meet this shorter deadline.

Advice line for whistleblowers

The Charity Commission, as part of its continuing aim to make it easier for charity workers and volunteers to draw serious concerns about their charity to our attention, have in June 2019 opened an advice line specifically for charity whistle-blowers.

Callers to this advice line will receive confidential advice to help them decide what to do about raising a serious concern about their charity, including whether and how to raise their concerns with the Commission. Although created by the Commission the advice line is being operated independently by the specialist whistleblowing charity Protect.

Further details for workers and volunteers on how to get advice from Protect on their free and confidential advice line (0800 055 7214) and on reporting to the Charity Commission can be obtained from the GOV.UK website <https://www.gov.uk/guidance/report-serious-wrongdoing-at-a-charity-as-a-worker-or-volunteer>.

Supreme Court hearing on sleep-ins

The Supreme Court has announced that it will hear the latest appeal of the Royal Mencap Society v Tomlinson-Blake on 12 and 13 February 2020, with a decision expected by July 2020.

This case relates to social care workers on sleep-in shifts where they provide overnight on-call support to patients but where they are expected to sleep through the majority of the shift. For these shifts employers historically paid flat-rate fees at rates below the minimum wage. Employment tribunal hearings in 2016 and 2017 ruled that the minimum wage should be applied to the shift time and that relevant workers were entitled to back-pay for historic underpayment.

This was overturned by judges in the Court of Appeal in 2018. However, Unison (representing Tomlinson-Blake) has been granted permission by the Supreme Court to appeal the Court of Appeal ruling.

Following the initial employment tribunal hearing the government published guidance stating that sleep-in shift care workers were entitled to the full minimum wage. However, it updated its guidance last year after the Court of Appeal overturned the ruling, and now says that “*Workers who are expected to sleep for most of a sleep-in shift will get the National Minimum Wage only when they are woken up to perform tasks*”.

But the government has also included a caveat that if the Supreme Court rules in favour of Tomlinson-Blake, its guidance could change once more. The guidance is on the GOV.UK website <https://www.gov.uk/night-working-hours>.

Companies House reforms consultation

In a press release issued in May 2019 the Department for Business, Energy & Industrial Strategy announced a consultation on proposed major reforms to the Companies House register aimed at tackling misuse and ensuring its accuracy.

The changes aim to ensure that companies, including charitable companies, will be better protected from fraud with improved safeguards over the personal data of on the register and the accuracy of other information on the register.

DBEIS are seeking views from company directors and other officers as well as representative bodies and others. Details of the consultation can be seen on

the GOV.UK website <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform>

Brexit and GDPR

One issue that Trustees may need to consider going forward will be the impact of Brexit on the GDPR requirements, particularly if there is no Brexit deal. The government recognised this issue and in September 2018 published guidance on “*Data protection if there’s no Brexit deal*”.

However this guidance was withdrawn on 1 March 2019 and the Government website now states that “*When the UK leaves the EU there may be changes to the rules governing the use of personal data*”.

We therefore recommend that trustees will need to monitor the government guidance on this to ensure that any necessary action to ensure continuing GDPR compliance is taken by the charity. The latest announcement is on the GOV.UK website <https://www.gov.uk/guidance/using-personal-data-after-brexit>.

The ICO website also has a separate page which they update monthly to highlight and link to what’s new in their Guide to the GDPR and we recommend that charities should also monitor this to ensure they are aware of any updates to the guidance <https://ico.org.uk/for-organisations/guide-to-data-protection/whats-new>.

The Institute of Fundraising (IoF) and the Fundraising Regulator have published some charity guidance on the GDPR which has been reviewed and co-badged by the ICO. This provides information on various areas including understanding what the GDPR means for charities and fundraising as well as giving some tools and templates to help charities put GDPR into practice <http://www.fundraisingregulator.org.uk/more-from-us/resources/gdpr-briefing-introduction>.

Update to guidance on reporting serious incidents in charities

In October 2018 the Charity Commission again updated its guidance on ‘How to report a serious incident in your charity’.

The Charity Commission requires charities to report serious incidents that take place within the charity. The reporting needs to cover what happened and, importantly, let the Commission know how the trustees are dealing with it, even if they have also reported it to the police, donors or another regulator.

The guidance includes information on the responsibility to report, including:

- What is a serious incident
- Who should report
- What must you tell the Commission
- When to report

It also sets out the main categories of reportable incidents and has links to examples and decision making guidance to help trustees decide what needs to be reported.

Charities have had to report serious incidents to the Commission since 2007 with the most common types of incidents reported being fraud, theft and confirmed safeguarding issues. However, the Commission is still concerned that their casework continues to find serious incidents that should have been reported but where reports were not made. It is therefore important that all trustees are aware of the current guidance.

The updated guidance can be seen on the GOV.UK website <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>.

Charity Trustee welcome pack

The Charity Commission have published an 8 page welcome pack which we understand will be emailed to new trustees to introduce them to the role so that they have a basic understanding of their duties and responsibilities. The guide:

- outlines the basics of trusteeship
- summarises what they can expect
- raises awareness of their duties and responsibilities
- explains what needs to be sent to us
- provides reference to more detailed guidance and information

Copies of the guide can be downloaded from the Commission website <https://www.gov.uk/government/publications/charity-trustee-welcome-pack>.

HMRC widens its challenge on charity advertising VAT

We have seen that HMRC is pursuing its challenge with more charities on digital advertising by providers such as Google and Facebook.

The issue is that for advertising services to be zero rated for VAT when supplied to a charity, the advertising, which may be supplied through either physical or electronic media, must be communicated to the public. For this purpose public means "the general public", although this can be widely interpreted to also include businesses and small groups, such as:

- readers of a trade magazine
- readers of a religious magazine
- people in particular parts of the country who may be targeted by a general poster campaign in their area.

However, for this purpose of the general public does not include selected individuals or groups. These are people who are:

- selected by individual home, business or email address whether named or not
- individually named people, all those at the same address such as family groups or everyone in a particular building.

HMRC are claiming that, because advertising on social media is targeted at selected individuals or groups, it is targeted marketing and not advertising. Because the suppliers of these services are in the main based overseas, if HMRC's approach is correct reverse charge VAT is due on the relevant expenditure (a Standard Rated supply in the UK). In many cases this could represent a significant cost to a charity.

Although we believe there are arguments to contest this approach, in view of the challenges that are being made by HMRC in this area we suggest that charities should consider their position on these services and seek advice whether or not they have already been challenged by HMRC.

Registering Charitable Trusts with HMRC

HMRC set up The Trust Register in 2017 to meet the requirements of the fourth EU money laundering directive. Trusts that are required to register must provide details on-line to HMRC of settlors, trustees and beneficiaries.

However, non-taxpaying trusts such as the majority of charitable trusts are currently not required to register.

From April 2020 under the fifth EU money laundering directive ('5AMLD') all UK resident express trusts will be required to register, regardless of whether or not they are taxpaying. The UK has until 10 January 2020 to incorporate 5AMLD into domestic law and then must implement the trust registration requirements by 10 March 2020. The government has already confirmed that this will happen irrespective of Brexit. Unregistered trusts in existence on 10 March 2020 will have to register by 31 March 2021 and trusts created on or after 1 April 2020 must do so within 30 days of their creation.

As all charitable trusts are set up under a trust deed or by will they will by definition be express trusts and therefore will be required to register irrespective of whether or not they have any tax liability. There will be a new penalty regime for failing to register and charitable trusts should therefore monitor these regulations when they are finalised.

Many charities which are not themselves trusts often have an associated charitable trust or trusts within the group. Even if these are effectively dormant they are likely to have to register. Charities should review any old trusts that are still in existence in advance of the deadlines.

Charity Gift Aid claims

HMRC, who previously proposed at recent Charity Tax Forum meetings that charities should collect donor forenames and not just initials for inclusion on their Gift Aid claims from April 2019, have now confirmed that this is not currently being made mandatory. However, they have reiterated the need for Gift Aid declarations (GADs) to include the fullest amount of information from the donors as possible and the requirement to include forenames remains HMRC's objective for the future.

HMRC are therefore strongly encouraging charities to provide full forenames wherever it is practical and possible to do so. Charities should therefore review their Gift Aid declaration forms and inform staff and volunteers about this to seek to collect full forenames in future.

Simplification of donor benefits rules for Gift Aid

HMRC is in 2019 simplifying the donor benefits rules which apply when charities are determining the value of benefit they can give to their donors without losing the entitlement to claim Gift Aid tax relief.

Under the simplified rules gifts by an individual or a payment by a company not exceeding £100 will have a benefit restriction of 25% of the gift or payment amount. For gifts and payments exceeding £100, the benefit restriction will be the sum of £25 and 5% of the amount of the excess over £100, subject to the overall benefit restriction of £2,500.

HMRC have said that this change will allow charities to give larger benefits to individual donors to encourage more donations.

Increases to charities' small trading exemption limits

As announced in the Budget 2018, changes to the charities non-primary purpose trading exemption limit came into effect from the beginning of April 2019.

Whilst a charity does not pay tax on profits that it makes from charitable trading as part of its primary purpose, if a charity carries out trading which does not relate to its primary purpose its profits from this are only exempt from tax if the related turnover is below the small trading tax exemption limits.

Previously the limits of this turnover have been £50,000, or 25% of the total annual turnover if this is lower, down to £5,000 for any charities with total income under £20,000. The new limits increase the maximum allowed non-primary purpose turnover to £80,000 and the level for the smallest charities to £8,000, with these changes coming into effect for accounting periods starting on or after 1 April 2019 (6 April 2019 for charitable trusts paying income tax).

The government policy paper notes that "it is anticipated that this measure will have a positive impact on charities who engage in non-primary purpose trading marginally above the current threshold as they will no longer need to set up a trading subsidiary". We believe that the number of charities with relevant turnover in the range £50,000 to £80,000 in a trading subsidiary will be limited, but for any charity where this applies it may be worth reviewing the continuing need for the subsidiary company.

Off payroll workers

It is already important for charities to establish whether or not a worker is employed or is working in a self-employed capacity (“off payroll”) for tax purposes as well as employment law. For employment law they may be classified as a worker and entitled to national minimum wage, holiday pay and may also be auto enrolled.

However, medium and large charities (based on the Companies Act size criteria) will have an additional responsibility from April 2020 when the IR35 ‘off payroll’ rules (which have applied to public sector bodies since 2017) are extended to the private sector.

Under the new rules instead of contractors themselves being responsible for determining their IR35 status, this obligation has been handed to the engager of each contractor, i.e. the charity. Where a contractor is deemed to be ‘inside’ IR35, the client must deduct employees’ NICs and income tax from the contractor’s pay, as well as paying employers’ NICs.

Charities with off payroll workers can make use of the Check Employment Status for Tax (CEST) service developed by HMRC to help businesses determine whether the off-payroll working rules apply, although there has been a significant level of comment that the CEST results are not accurate.

Making Tax Digital

Making Tax Digital (‘MTD’) is considered to be the most fundamental change to the tax administration system for at least 20 years.

From 1 April 2019 most VAT registered businesses, including charities, with a taxable turnover above the VAT threshold (currently £85,000) have been required to keep digital VAT business records and send their VAT returns using MTD compatible software. Any businesses with a taxable turnover below the VAT threshold can also sign up for MTD for VAT voluntarily.

The only exceptions to this have been a small minority of VAT registered businesses for which HMRC announced a deferral until 1 October 2019. Businesses given this six month deferral include ‘not for profit’ organisations that are not set up as a company and VAT groups.

Charitable companies which are not part of a VAT group have been required to use the MTD service from 1 April 2019. However, any other charities will need to be ready to sign up for MTD from 1 October 2019 including keeping

your business records digitally from the start of your accounting period. If you already use software to keep your business records you should check your software provider’s plans to introduce MTD-compatible software.

MTD does not require you to keep additional records for VAT, but to record data and information digitally. Your digital records will need to include, for each supply, the time of supply (tax point), the value of the supply (net excluding VAT) and the rate of VAT charged. They should also include information about your business, including business name and principle business address, as well as your VAT registration number and details of any VAT accounting schemes you use.

Crowe have published the questions we are asked most frequently on MTD together with responses to help to guide you through the changes and these are also on our website <https://www.crowe.com/uk/croweuk/insights/making-tax-digital-for-vat>.

Withholding Tax risks from a no-deal Brexit

On 20 March, just nine days before the initial deadline for the UK to leave the EU, HMRC published its guidance on the impact of Brexit on withholding tax (WHT) on interest, royalties and dividends.

Currently, as a member of the EU, the UK benefits from valuable tax reliefs in relation to WHT on interest, royalties and dividends which are paid both to the UK and also from the UK to other EU member states. These reliefs include the EU Interest and Royalties Directive (IRD).

The IRD allows EU companies to make interest and royalty payments to associated organizations within the EU without needing to deduct tax from the payments. If the UK leaves the EU without a deal on October 31 2019, then these valuable reliefs may no longer apply, potentially leaving both UK and EU resident entities with the need to account for WHT on more of the payments they make.

For charities, the loss of the IRD is likely to be a potentially significant change as this could create cash costs to charities receiving payments from EU where the payer may have to withhold tax which the charity cannot recover. For example, if an arts charity lends a collection to a gallery in Europe which pays for the right to display the items, this could be considered to be a royalty payment and WHT may apply.

On a no-deal Brexit, the quantum of tax to be deducted at source will be determined by the level set in the appropriate double taxation treaty between the UK and the EU member state. In some cases, such as the Spanish, French and German treaties, there will continue to be full exemption from WHT although to benefit from the tax treaty a treaty application form will usually be required to be completed and stamped by the overseas EU taxing authority to enable the payer to make the payment at the reduced treaty rate or to be exempted.

The IRD only applies to payments between associated organizations. However, the loss of the IRD has highlighted the need for charities to consider WHT costs on all transactions within the EU.

As the obligation to withhold tax (and any penalties for failure to do this) rest with the paying entity, generally where there is any doubt about whether or not WHT applies a payer will adopt a prudent approach. Therefore charities should consider the following steps before entering any cross border transactions:

- Make sure that any contracts are clear about what service the charity is providing, for example, often management services do not attract WHT whereas Royalty payments may do.
- Discuss and agree in advance with your counterparty the WHT approach to any payments to be made to the charity.
- Where possible price any WHT cost into the contract terms or agree that the payments under the contract will be the net.
- Where WHT is due and cannot be passed on as a cost to the paying party, ensure that any all appropriate paperwork to claim tax treaty rate reductions has been completed in good time.

Further details, including on relevant tax treaties, can be found on the GOV.UK website <https://www.gov.uk/guidance/changes-to-deduction-of-tax-on-interest-royalties-and-dividends-if-the-uk-leaves-the-eu-without-a-deal>

National Minimum Wage – are you getting it right?

National Minimum Wage (NMW) applies to most workers over school leaving age including casual, part-time and agency workers. It is a criminal offence to not pay an individual NMW and those who do not comply will be publicly named after October 2013. As a result, many household names are falling

victim to the NMW regulations and importantly which payments or deductions from a worker's salary reduce pay for NMW purposes.

The government have said that the "top five reasons for National Minimum and Living Wage underpayments...were:

- taking deductions from wages for costs such as uniforms
- underpaying apprentices
- failing to pay travel time
- misusing the accommodation offset
- using the wrong time periods for calculating pay."

In addition for charities there is a risk that they inadvertently give volunteers an employment status. There is also the ongoing legal challenge on the status of employees providing sleep-in services - the current position on this is that workers who are expected to sleep for most of a sleep-in shift will get the NMW only when they are woken up to perform tasks. However, the Supreme Court has set a date in February 2020 to hear an appeal against this ruling.

It is therefore important that charities regularly review and keep up to date with this area. The NMW rates change every April and the current rates alongside common examples which may deduce NMW pay are summarised below.

Which deductions reduce can pay below NMW?

Broadly speaking and under regulation 12(1) of the National Minimum Wage Regulations 2015, if payment from a worker to the employer (or a deduction from worker's pay) is for the employer's use and benefit, then this reduces NMW pay. However, if payment from a worker to the employer (or a deduction from worker's pay) is not for the employer's use and benefit and the worker has free choice on whether to make a purchase, then this does not reduce NMW pay.

Four common deduction examples, including in relation to training costs, are set out below. Note that there is an exception to the above where a deduction is "*in respect of the worker's conduct, or any other event, where the worker...is contractually liable*".

1. Uniforms

Our experience is that HMRC will treat any requirement for employees to purchase specific work clothes, even from their employer, as a deduction that reduces the average rate of pay. HMRC is and has been targeting employers that require only a simple uniform (e.g. black trousers and white shirt) which can be purchased from any retailer and is applying notional deductions from salary (they have done this with Wagamama, TGI Fridays and Primark in recent times).

For the purposes of calculating the NMW, those theoretical clothing costs would be deducted from the wages received during the first reference period and, if the average rate falls below the prescribed minimum, a breach may be said to have occurred. Therefore, care should be taken in this area. However, if the dress code imposed on employees is vague and less specific, such as smart workwear, then this does not appear to affect NMW.

2. Season ticket loans

Any payments or deductions made to repay the amount of a loan or advance (including season ticket loans) will not reduce NMW pay provided there is supporting documentation covering the terms of the loan agreement and sufficient pay records to show that a genuine loan advance was made and the employee has received the money.

3. Pensions via salary sacrifice

Employer contributions to an employee's pension are not classified as payments to the employee and these payments therefore do not count toward a worker's total remuneration. It is therefore important that any pension salary sacrifice arrangement cannot take the employee's remaining pay below the NMW. However the same issue does not apply to additional employee contributions because it is the employee's gross salary before any employee pension contributions are made which counts for NMW purposes.

4. Training costs

Training costs are sometimes paid by workers to their employer, or deducted from a worker's pay. If the arrangement is contractual, then any payments or

deductions would reduce NMW pay as the expense is incurred in connection with their employment duties as per regulation 13 of the National Minimum Wage Regulations 2015.

However, where an employer makes a deduction from a worker's pay and uses it to pay expenses to a third party for training or other costs at the request of the worker, deductions will not reduce NMW pay. These costs must be a liability of the worker and not a requirement of the employer, and the employer cannot impose an administrative charge for making the deduction.

Note that care should be taken when training expenses are incurred to be in a position to do or secure the job as the same rules may not apply.

Current rates

The rates for the National Living Wage (employees over 25) and the National Minimum Wage (employees under 25) are below for the current tax year. The rates update every April.

Age	25 and over	21 to 24	18 to 20	Under 18	Apprentice
April 2019	£8.21	£7.70	£6.15	£4.35	£3.90

You should always consider when making any deductions from a worker's pay, or receiving any payments from a worker if these amounts are for the employer's use and benefit and the necessary NMW implications.

- The National Minimum Wage Regulations 2015 can be seen on the GOV.UK website - <https://www.legislation.gov.uk/ukxi/2015/621/contents/made>

Appendix 4 - Non Profits events, courses and briefings

We believe it is important to keep our clients up to date on the issues that affect them. As a part of our ongoing communication we regularly hold seminars and courses and listed below are details of some of the events in 2019. Please visit our website or register to our mailing list to stay updated on these - nonprofits@crowe.co.uk.

Breakfast briefings

These briefings are run by experts from our Non Profits team on topical issues as they emerge. Registration and breakfast at these briefings is from 8:30, the sessions commence at 9:00 and aim to end at 10:15.

• Managing investments	24 Sep 2019
• The innovation revolution or evolution	3 Oct 2019
• Refreshing risk management	12 Nov 2019

Tax training courses

• Charity VAT update	26 Sep 2019
• Schools VAT update	2 Oct 2019
• Introduction to charity VAT	30 Oct 2019
• Charity VAT reliefs	21 Nov 2019

Trustee essentials

Our Trustee essentials seminars have been developed to consider the issues facing trustees. We take an in-depth look at the key areas of responsibility which will provide trustees with useful information, tools and techniques. These sessions are full day seminars and cost only £50 per delegate.

• Trustee essentials (Manchester)	24 Sep 2019
• Trustee essentials	18 Oct 2019
• Trustee essentials	6 Dec 2019

Other seminars and conferences

• Charity Conference (Manchester)	19 Sep 2019
• Maximising your organisation's impact	23 Sep 2019
• INGO conference 2019	21 Nov 2019

For further information on or to register for any of the above events, please visit our website <https://www.crowe.com/uk/croweuk/industries/non-profits> or email nonprofits@crowe.co.uk



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