

Charities & Non-profit newsletter.

April 2024

pem.



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Tax round up.

Gift Aid and the Digital Markets, Competition and Consumers Bill

The Digital Markets, Competition and Consumers Bill is currently making its way through parliament. This bill is seeking to "regulate and increase competition in digital markets". However, when first announced, there was concern that this would negatively impact charities' ability to claim Gift Aid on membership income.

Under the proposed new bill consumers will benefit from a 14 day 'cooling-off' period following new or renewed subscription contracts.

Membership subscriptions can qualify for Gift Aid where they secure membership of the charity but nothing more e.g. they must not secure the right to personal use of any of the charity's services or facilities. To be eligible for Gift Aid relief, a donation must (among other things) not be subject to a repayment condition.

Given the automatically implied repayment condition inherent within a 14-day cooling off period, this could result in charities which rely on membership subscriptions having their Gift Aid claims disallowed.

Following campaigning from the Charity Tax Group and the Charity Finance Group, highlighting this unintended consequence of a bill designed to protect consumers, an announcement within the recent Spring Budget confirmed that it will amend the Gift Aid rules to ensure that eligible charities can continue to claim tax relief whilst remaining compliant with the new bill.

Guidance on loan waivers

Individuals

An individual who's entitled either to a loan repayment or a refund can opt to waive this right. This section provides an overview of the rules and what to be aware of when an individual agrees to waive this right.

Consider a cancelled ticketed charity event, where the guests are given the opportunity to claim a refund for their ticket. In this scenario, provided all other conditions for Gift Aid are met, the waived refund can qualify as a donation for Gift Aid as a sum of money was already paid to the charity when the tickets were purchased.

Similarly, where a loan agreement including a repayment clause is entered into, and the right to repayment is subsequently waived, the amount waived can be treated as a donation. Again, provided all other conditions for Gift Aid are met, the waived loan can qualify as a donation for Gift Aid, given that a sum of money was paid to the charity when the original loan was advanced.

HMRC will consider the donation to have been made at the date of the waiver and not the date of the original payment. A Gift Aid declaration will need preparing if one is not already held for the donor.

Records must be kept by the charity for the waiver to be eligible – this applies for both refund waivers and loan waivers. For a refund waiver, it needs to be made clear to the individual that they are entitled to receive a full refund, and that by waiving their right to a refund, they are giving up all rights to a future repayment.

A loan waiver requires a legally enforceable document, such as a deed prepared by a solicitor, to ensure the donor cannot later change their mind. The document needs to detail what is being waived, including amounts, and confirmation that the donor wants the gift to be treated as a donation for Gift Aid. It must make clear that the lender is giving up all rights to a future repayment.

An individual donor must make sure that they have paid sufficient tax to cover their donation for the year in which the donation was made.

Companies

For companies considering impairing or releasing a loan made to a charity, the position is more complicated. This is because loans fall within the Loan Relationship rules for Corporation Tax purposes.

As this is a complicated area, companies should seek professional advice before deciding whether to proceed.

Areas to consider include whether the loan was originally made as part of the company's trade, whether there's any connection between the charity and the company, whether the loan was an arm's length transaction, and whether there are any unallowable purpose rules to be considered. As for individuals, any waiver would need to be properly documented and all records kept.

Creative sector tax reliefs updates

Also announced in the Spring Budget was confirmation that the temporary higher rates of tax credit for Theatre Tax Relief (TTR), Orchestra Tax Relief (OTR) and Museum & Gallery Exhibitions Tax Relief (MGETR) are staying permanently.

The rates therefore for TTR and MGETR will be 40% for non-touring productions and exhibitions, and 45% for touring productions and exhibitions. OTR will be available at 45% for all productions.

It was also announced that the sunset clause for MGETR has been removed, meaning this is now a permanent tax relief, with no expiration date.

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Trivial benefit exemption (TBE).



The TBE is available all year round and is a valuable exemption for employers, especially when considering the reporting obligations of gifts and staff entertaining.

Under the TBE, if an employer **provides** a benefit to its employees, the benefit is exempt from tax as employment income if **all** of the following conditions are met:

- The total VAT inclusive cost of the benefit does not exceed £50 (per head if provided to a group).
- The benefit is not cash or a cash-voucher (a store gift voucher is acceptable).
- The employee is not entitled to the benefit as any part of a contractual obligation or pursuant to a relevant salary sacrifice arrangement.
- The benefit is not provided in recognition of services performed by the employee as part of their employment duties (for example, a well-done gift/lunch for work done).

As mentioned above, it is the total VAT inclusive cost of each benefit which must be less than £50 per head for the TBE to apply. This includes all transactions for the same gift or event, for example at all staff social events where perhaps different employees initially pay for different expenses at the same event. In addition, any travel costs borne for these events should also be included in the £50 per head.

As the exemption is generous HMRC are strict on its correct application, particularly with regard to the interpretation of "if an employer provides...". For the TBE to apply, individuals should not be reimbursed their own expenses incurred personally as such reimbursement would not be employer provided.

Finally, HMRC consider that any benefit provided on a regular basis may create a 'legitimate expectation' that the benefit will be received and in their view it may therefore considered to have become contractual. This is HMRC's view, and they state that employers need to consider, when applying the TBE, whether they are providing what is, in effect, a contractual benefit.

Reimbursement of eye tests and glasses

Many employers, including charities, currently foot the bill for employees' eye tests, glasses and contact lenses.

HMRC's guidance states that eye tests are an exempt benefit if paid for by employers if they are required by Health and Safety legislation for employees who are required to use a visual display unit (VDU) as part of their normal duties. Similarly, glasses and contact lenses may also be an exempt benefit if the employee then requires them solely for monitor or screen work. The cost should be apportioned where the prescription is for general use but includes a special prescription for VDU use.

This guidance used to apply to reimbursements made to employees who paid for their eye test, glasses or contact lenses personally. However, in November 2022 HMRC quietly changed their internal tax guidance such that if an employee pays for their own eye test, glasses or contact lenses and is reimbursed for the cost, the reimbursed amount is subject to PAYE income tax in the month of reimbursement. There was no wider communication from HMRC to employers regarding this significant change.

For National Insurance purposes, a payment for an eye test can be disregarded as Health and Safety legislation considers an eye test to be an expense incurred in relation to the employment.

If this eye test identifies the need for glasses or contact lenses, these can also be disregarded for National Insurance purposes.

In addition, the Health & Safety Executive's guidance still confirms that these costs may be reimbursed to employees.

Therefore, as HMRC's internal guidance continues to state that for the tax exemption to apply, we advise that the qualifying costs of eye tests, glasses and contact lenses should not be reimbursed to employees and instead should be provided directly by the employer, for example, via an eye test voucher.

Please contact us if you would like to discuss the historical position regarding eye tests and glasses.

Payrolling benefits in kind

HMRC have recently announced that from April 2026 it will become mandatory to payroll taxable benefits in kind and to pay Class 1A National Insurance Contributions.

Read our article on simplifying benefits in kind on our website for more information.

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Diversity and inclusion at the Charity Commission.

Diversity and inclusion is the topic for many discussions both within charities and other organisations. In April 2024 the Charity Commission published a policy paper Diversity and Inclusion at the Charity Commission 2024 to 2027 - GOV.UK (www.gov.uk), which sets out the Charity Commission's own approach. The paper states:

> *"We are a better organisation if we are a diverse organisation – diverse in terms of age, background, culture, beliefs, or geography. If we listen to, and seek to bring together different perspectives, we will be more effective, more empathetic, and ultimately, a better regulator."*

The policy paper sets out a number of objectives for the Commission and an action plan around accessible recruitment and processes to support and develop people (including practices to tackle bullying, harassment and discrimination).

Whilst every charity will respond to the challenges of diversity and inclusion differently the key aims set out in the policy: to understand stakeholders, widen access, be flexible in the working environment and welcome talent from wherever it comes, are ones which can help any charity's trustees think through the issues in relation to them.

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The reverse charge.

Many services received from overseas suppliers are subject to the reverse charge. Under the reverse charge procedure, the customer is responsible for accounting for any output tax due on the value of the supply received and can claim input tax to the extent allowed in accordance with the normal rules. The effect of the reverse charge is to put a person in the same position as they would have been had they bought similar services from a UK-based business. This is neutral where the cost can be fully attributed to the making of taxable supplies (or supplies that are outside the scope of UK VAT but would be taxable if made in the UK).

The reverse charge does not apply to exempt or zero-rated services. It also does not come into play where taxable services are obtained from overseas suppliers by organisations that are not liable to be registered for VAT.

A charity that is not registered can receive services from overseas without incurring a VAT cost. However, this is not the case for a VAT registered charity. This is because the reverse charge requires VAT registered persons to account for output tax on supplies received from overseas regardless of the use to which the services are put. The hit is on VAT recovery entitlement because no VAT can be claimed back against non-business activities.

VAT registration threshold increase

In the 2022 Autumn Statement, we were told that the annual VAT registration threshold would remain frozen at £85,000 until 31 March 2026. However, in the first change since April 2017, the threshold increased to £90,000 on 1 April 2024 following the Chancellor's Budget announcement on 6 March 2024.

The increase in the VAT registration threshold is a welcomed change that will help small charities with reasonably significant taxable income from business activities avoid having to register for VAT. It's not all about taxable income, though. A charity may be very good at monitoring taxable income against the VAT registration threshold, but many do not realise that the value of aforementioned reverse charge services received from overseas suppliers count when considering whether VAT registration is necessary.

Suppose a charity receives taxable income of £85k from sponsorship, admission fees and the sale of donated goods over the course of a year. On the face of it, this would mean no VAT registration liability. However, if in the same period, the charity received general social media advertising services of £10k from a supplier based in the United States, the charity would be liable to register for VAT as its taxable supplies for the year would be £95k (£85k + £10k). This is an easy trap to fall into but is one that can be avoided in marginal circumstances with a bit of forethought.

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Accepting, refusing and returning donations to your charity.



In March 2024, the Charity Commission published new guidance on accepting, refusing and returning donations to your charity.

The guidance starts with the presumption that all donations should be accepted, however, the guidance makes clear that it is the trustees' decision as to whether they believe that accepting the donation will be in the charity's best interests.

The guidance will support trustees in interpreting the law, and in making the best decisions following the charity's powers and in line with the trustees' duties.

Legal duties

You must refuse a donation that comes from an illegal source or with an illegal condition.

Guidance for due diligence and monitoring the end use of funds as well as guidance checklists regarding key questions for knowing your donor, may help trustees identify whether there is a suspicious donation. These tools can help management and trustees in creating a policy around major donations and the processes needed to manage them.

Other donations may also legally need to be returned where:

- it is from a donor who does not have the mental ability to decide to donate.
- the donation cannot legally be given to your charity. For example, where the donor does not own the property that they are donating.
- under the terms of the donation, funds must be returned in certain circumstances. For example, a grant agreement that says that your charity must return any unused funds by a particular date or return any funds that cannot be used for the purpose for which they were given.

Trustees' duties

Trustees may not have a legal duty to return a donation, however, there may be circumstances when it is in the best interests of the charity to do so.

Trustees need to:

- **consider the risks involved in refusing or returning the donation**, and how likely and serious these are. These include negative financial impact, ability to deliver services and ability to attract donations in future.
- **consider the risks involved in accepting or keeping the donation**, and how likely and serious these are. These include the likelihood of reduced support or reputational harm, particularly among supporters or beneficiaries.
- determine how any decision aligns with **their charity's purposes**.
- **determine what steps they can take to mitigate the risks**. These include negotiating the terms of a conditional donation with the donor or developing a public explanation for a decision.

Trustees responsibilities are set out in the Charity Commission guidance **"It's your decision"**, which states that as trustees you must:

- act within your powers
- act in good faith and only in the interests of the charity
- make sure you are sufficiently informed
- take account of all relevant factors
- ignore any irrelevant factors
- manage conflicts of interest
- make decisions that are within the range of decisions that a reasonable trustee body could make.

The guidance on donations makes clear that individual personal factors should not be a key factor in the decision whether to refuse or return a donation.

Trustees' powers

Where trustees have decided that it is in the best interests of the charity to refuse or return the donation, they must then ensure that they act appropriately in terms of their powers and the law.

Where charity constitutions have followed Charity Commission models there should be sufficient general terms to allow the trustees to make refuse or return decisions. If trustees do not believe there are sufficient powers or would like more specific powers, they should consider reviewing and revising their governing documents.

Where there are sufficient powers, charities will still need to consider due process, particularly if they are returning a donation, such as land or permanent endowment, where they must operate within the existing legal framework.

Next steps

As with all policies, it is important for trustees and management to agree a framework when there is no pressure or other influence.

Therefore, we would recommend that trustees ensure that they are satisfied with the powers in place and develop their own policies and procedures for assessing major donors, including routes to escalate concerns and manage publicity surrounding significant decisions.

Fundraising Regulator update – complaints and subcontracting face-to-face fundraising.

In a blog published in February 2024, the Regulator indicated that the Annual Complaints Report will be published in 2024 as normal but after that changes will be made to part two of the report. The 2022/23 report can be found on their website.

Currently part one of the report shares learning from the Regulator's casework that is relevant to the wider fundraising sector and part two shares information about complaints reported by a sample of the UK's largest fundraising charities.

Following a survey in the summer of 2023, the Regulator intends to pause the publication of data in 2025 and 2026 to develop improvements in the way the information is collected and shared, this will include increasing the number of charities surveyed.

The top five methods complained about in 2022/23 when compared to 2021/22 were:

2022/23	2021/22
1. Door-to-door fundraising	1. Charity bags or clothing banks
2. Charity bags or clothing banks	2. Digital
3. Addressed mail	3. Collection
4. Digital	4. Addressed mail
5. Collection	5. Advertisements

Following the pandemic, the significant increases in door-to-door fundraising activity has led to an increased number of complaints. Misleading information was also identified as a recurring theme and cause of complaint across different types of fundraising. The Regulator recommended the need for clear and considered wording in material and scripts as well as appropriate oversight and control of subcontractors.

In October 2023 it announced its first market inquiry to be made into the use of subcontracting in face-to-face fundraising by charities and agencies. The post-workshop report was published in March 2024.

The key message of the executive summary is:

> *"Every charity and agency that engages in face-to-face fundraising should review their processes and take action to mitigate risks of poor practice. Training and monitoring should not be sacrificed or stretched for commercial considerations. Charities and agencies should ensure that they can train fundraisers and manage their campaigns to a level that minimises the risk of poor behaviour and non-compliance with the code. Robust monitoring is essential, and should be at a level that both charity and agency partners can be reassured that fundraising is being carried out safely and in line with the contract".*

Updated guidance and support for charities is expected to follow the report but the workshops highlighted the following issues to consider when planning face-to-face campaigns:

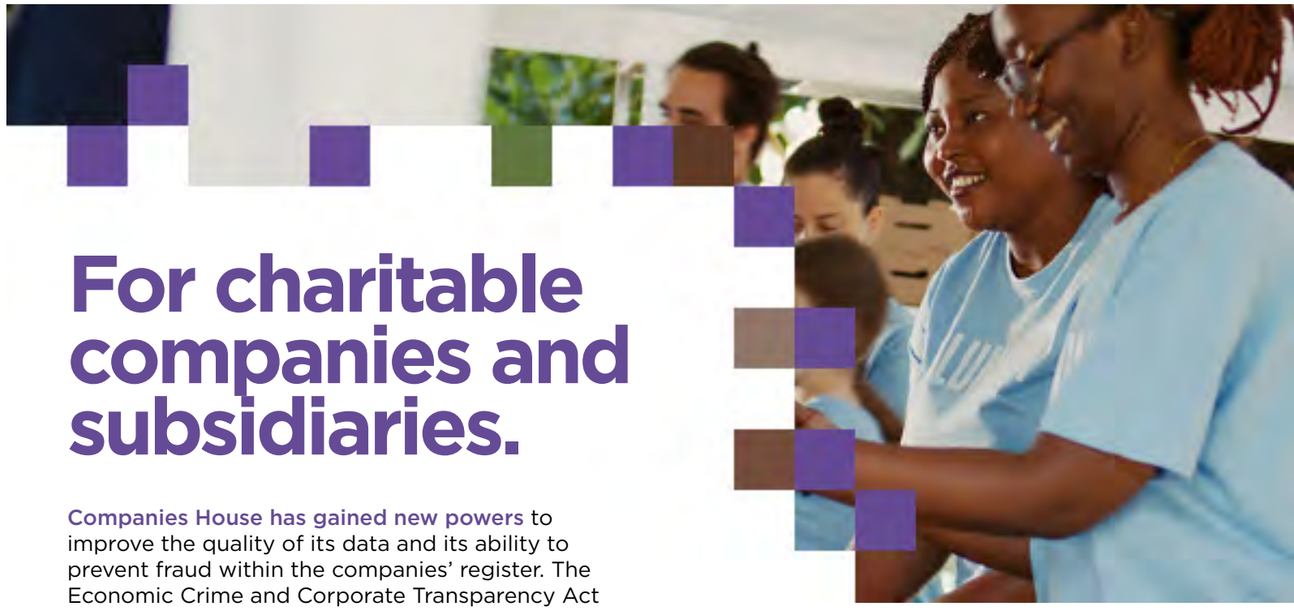
- Due diligence
- Fundraiser payment models, contracts, sub-contracts and service level agreements
- Registration with the Fundraising Regulator and Chartered Institute of Fundraising
- Licensing, DBS checks and accreditation of fundraisers or agencies

As a reminder all charities with income of over £1m are currently required to report on fundraising in their annual reports and accounts.

The key elements of the report are:

a. the approach taken by the charity to activities by the charity or by any person on behalf of the charity for the purpose of fund-raising, and in particular whether a professional fund-raiser or commercial participator carried on any of those activities
b. whether the charity or any person acting on behalf of the charity was subject to an undertaking to be bound by any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, in respect of activities on behalf of the charity, and, if so, what scheme or standard
c. any failure to comply with a scheme or standard mentioned under paragraph (b)
d. whether the charity monitored activities carried on by any person on behalf of the charity for the purpose of fund-raising, and, if so, how it did so
e. the number of complaints received by the charity or a person acting on its behalf about activities by the charity or by a person on behalf of the charity for the purpose of fund-raising
f. what the charity has done to protect vulnerable people and other members of the public from unreasonable intrusion, unreasonable persistence and undue pressure in the course of, or in connection with, such activities.

The Regulator has recommended in the report, as good practice, that all charities disclose in their annual report all agencies (including subcontractors) that fundraise on their behalf, and their status in respect of registration with the Fundraising Regulator.



For charitable companies and subsidiaries.

Companies House has gained new powers to improve the quality of its data and its ability to prevent fraud within the companies' register. The Economic Crime and Corporate Transparency Act 2023 (ECCT Act), empowers Companies House to scrutinise information, demand supporting evidence and rectify inaccuracies. Registered office addresses changes mean PO boxes can no longer be used and registered email addresses are required for all companies. The changes also allow Companies House to share data with government departments and law enforcement agencies to better combat economic crime.

Company size monetary thresholds are set to rise. The changes are planned for years starting on or after 1 October 2024 but have yet to be adopted. As a result, the small company income threshold is expected to increase to turnover of £15m from £10.2m and the balance sheet threshold to £7.5m from £5.1m.

The employee number threshold is expected to remain at 50 and although this will not directly impact charity audit thresholds, it may mean that more subsidiaries fall from the audit requirements, as subsidiaries that are part of a group, that falls within the definition of small, will not require an audit.

In a letter to the Department for Culture Media and Sport, the ICAEW has expressed support for a proposed consultation on the **threshold for the audit of charities in England and Wales** as it considers that the effect of recent inflation is to drag many smaller charities towards current audit thresholds in what it considers a disproportionate way when charities are facing other financial pressures.

Annual return data 2022.

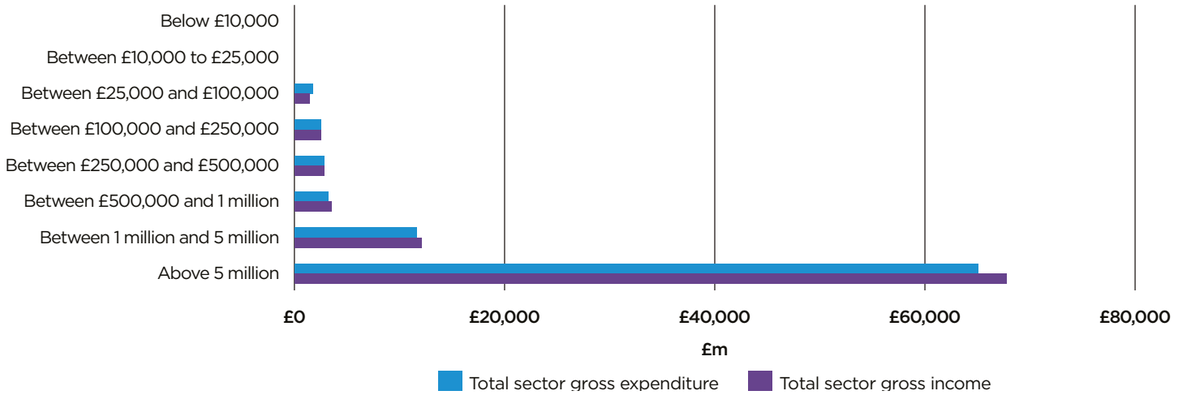
In April 2024, the Charity Commission published a summary of the annual return data from 2022. 91.6% of charities filed an annual return in 2022.

Both income and expenditure increased in 2022 in comparison with 2021, based on the Charity Commission analysis, although reserves remained similar. The Charity Commission reports that this reflects 'the sector overall recovery from the COVID-19 pandemic whilst responding to an increase in demand for services'. Large charities, with income of £5m (approximately 2% of registered charities based on April 2024 figures) account for 75% of the sector income, and those charities have seen their income rise ahead of expenditure.

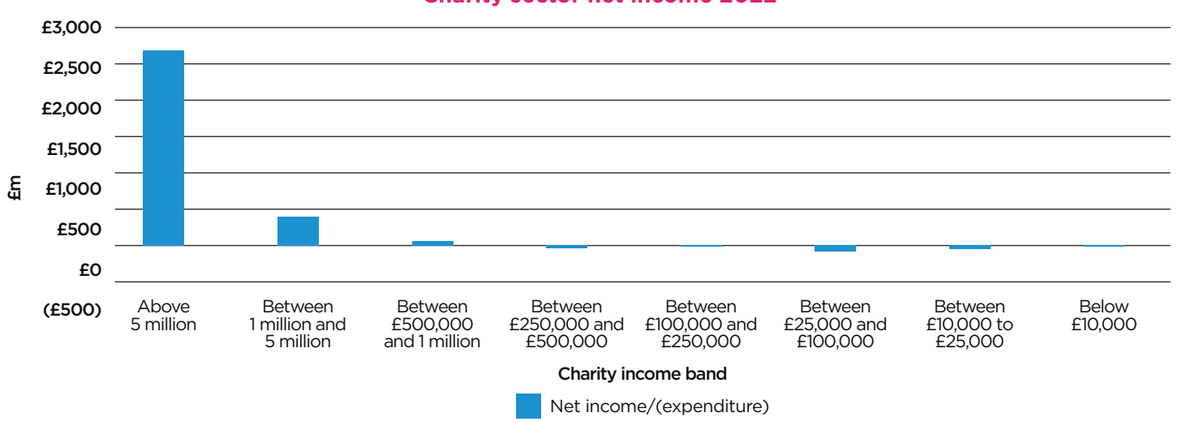
The figures also highlight the difficulties some smaller charities may be suffering, as the net position reported for the smaller charities with income less than £500,000 was a loss. The report states that government grant income also decreased between 2021 and 2022 from £8.2bn to £7bn, with 25% less charities reporting that they had received government grants. The largest percentage decreases in this source of income were felt by smaller income charities.

The number of volunteers in the sector increased, with over 6 million people active in the sector. However, the report states that recreation, environment, conservation and heritage charities reported larger increases in volunteer figures, while religious charities, those providing front line services and those providing support to armed forces personnel saw a decrease in reported volunteer figures.

Total charity sector income and expenditure 2022



Charity sector net income 2022





Charity impact reporting – Informing the forthcoming Statement of Recommended Practice (SORP).

The Institute of Chartered Accountants of Scotland (ICAS) has commissioned a study into charity impact reporting. Phase one of the project was published in 2022 and analysed how UK charities developed and used impact reporting.

The key takeaways from that phase were that charities interpreted impact differently; a wide variety of different models were used, but capturing data was a challenge; and that guidance was preferred over rules.

Phase two of the project has now been published. This part of the report considers the importance of impact information to charity stakeholders, such as funders, donors and supporters, and how that information is used. It includes some best impact reporting practice examples that it identified in its review to support discussions between charity management and trustees. The examples cover both qualitative reporting, mainly though case studies, and quantitative reporting.

The report found there was variable practice in reporting with two thirds of the charities included in the study including some kind of impact reporting, although the report commented that some of this appeared incidental reporting through inclusion of case studies and testimonials. The report also stated a belief that there was scope for a more balanced approach in reporting, through reporting both successes and failures. The report sets out some recommendations at charity, sector and funder level.

Charity recommendations include:

- All charities should engage with identifying impact and consider how data can be captured systematically.
- Case studies and testimonials invariably convey positive news stories therefore charities should consider how they adopt a balanced view.
- Charities should consider how they collect impact data on a project basis also considering the timescale for measuring impact so that they can prioritise critical and decision relevant information.
- Charities should seek to enhance the validity and verifiability of their processes.

Funder recommendations include:

- Funder expectations should be proportionate to the funding.
- Funders should consider unrestricted funding to build capacity for capturing and monitoring impact.
- Funders should consider how they use their experience to guide charities and ask targeted questions to identify impact as well as output related data.

Trustees should take this opportunity to take stock of their systems and processes and consider how they can refine both data collection as well as quantitative and qualitative reporting.



Managing consent.

On 1 March 2024 the Information Commissioner's Office issued an enforcement notice to the Penny Appeal for sending 461,650 spam text messages over a ten-day period in 2022. These messages were sent to a database of individuals who had never agreed to receive marking communication from Penny Appeal.

The regulator reported that it had been engaging with Penny Appeal since 2020 after receiving similar complaints about a marking campaign, with the subsequent texts being sent while the charity was under investigation. The ICO's investigation found that the charity had created a new database where requests to opt out were not recorded.

The ICO includes some advice to help charities comply with the law:

- Only email or text someone if they have specifically consented to receiving emails or texts – for example, by ticking an opt-in box.
- People cannot provide consent as a condition of subscribing to a service – consent must be freely given and fully informed.
- Offer an opt-out option (by reply or unsubscribe link) and act on this promptly.
- Keep a clear 'do not contact' list of anyone who opts out or unsubscribes from your communications, and screen against this list every time you send an email or text.

The ICO enforces the Privacy and Electronic Communications Regulations 2003 (PECR), which cover the rules for organisations wishing to make direct marketing calls, texts or emails.

Charities can visit the ICO website for further guidance and support on all aspects of data protection, including general recommendations for charities and bespoke advice for small organisations.

Top tips include:

- Training new employees (and volunteers) over how they should store and handle personal information, with regular refresher training.
- Having a plan for when something goes wrong, including ensuring that your employees know how to react and what to report to whom.
- Setting compliance goals, ensuring the incidents are logged (investigated) and the risks associated with data breaches are rated, understood, and reported where necessary
- Managing data retention, with a policy that makes clear when data should be reviewed, deleted, or anonymised.
- Being transparent with how you will use data, ensuring that consent is fully informed, freely given and not hidden within general terms and conditions.

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If you would like to discuss any of the points raised in this newsletter, please contact us.



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