

Claire Morrison
OSCR
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13 September 2016

Dear Ms Morrison,

Matters of material significance: Consultation document

On behalf of ICSA: The Governance Institute I am pleased to submit comments on the above consultation.

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance.

We are the professional body qualifying and supporting Chartered Secretaries, corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and corporate governance. The breadth and experience of our membership enables ICSA to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. Our members' wealth of expertise and experience of charities, of the independent examiner regime and their detailed understanding of charity and company legislation and regulation, has informed our submission.

General comments

ICSA welcomes the general approach taken by the regulators to assist those auditors and independent examiners working with charities which have multiple regulatory jurisdictions and to promote consistency in the area of matters to be reported to them.

The move to reflect the language and definitions used in the Charities SORP is a logical and helpful development.



While the stated aim is not to add unnecessary burden to the role of auditors and independent examiners, due consideration should also be given to the likely impact on trustees. With auditors and independent examiners looking for what action has been taken as a result of their report, the onus is placed upon trustees to demonstrate action within the audit/independent examination cycle. At which point do trustees get to present their case for any perceived inaction to the auditor/independent examiner or to the regulator once the matter has been reported? Further guidance on this aspect of the proposed changes would be most welcome, especially around the potential actions the regulator(s) may take in reality given the reduction in the resources of the Charity Commission (England and Wales). How these changes then impact on other regulatory approaches and established guidance will also need to be updated accordingly.

Specific questions

Q1. The list of material matters of significance which must be reported was developed to aid auditors and independent examiners in understanding their duties under the legislation. Do you agree that it is useful to have a list of matters which must be reported? If not, what means do you suggest of helping auditors and independent examiners meet their statutory duty to report?

The list is a helpful summary of the material matters to which auditors and independent examiners should be alert.

Q2. Do you agree that the descriptions of the matters to be reported are clear and helpful? If not please advise where further clarity is required.

The descriptions are clear, but the document would benefit from including the definition of material significance used in the SORP.

Q3. The terminology in Matters 1 and 2 has been amended to agree to that used in the SORP, do you agree that this is helpful for consistency? If not please advise what terminology you would recommend and why?

The move to use the same terminology as that applied in the SORP is welcome. As mentioned above, a glossary of key definitions repeated from the SORP would greatly enhance the final version of the document.

Q4. Matter 3 has been expanded to specifically include the charity's bank account in the areas where funds could be used for money laundering. This is based upon our experiences where the charity's bank account has been used to move money. Do you agree that the expanded definition is helpful? If not please advise what alternative definition you would use.

This approach seems reasonable and helpful.

Q5. Matter 4 is now applicable to Northern Ireland and has been expanded to exclude the need to report any matters that were related to a qualifying offence as defined by section 3(7) of the Northern Ireland (Sentences) Act 1998. Do you agree that the matter should be

expanded in this way? If not please explain your answer and advise what alternative wording would you use.

The proposed approach and wording seems sensible.

Q6. Matter 8 from the previous list of matters to be reported has been removed. This is due to the fact that this led to auditors and independent examiners advising the regulator where they had simply ceased to hold office. Where ceasing to hold office occurs due to a reportable matter this should be covered by an alternative matter. Do you agree that this matter should be removed? If not please advise why it should be retained.

The proposed action appears sensible to reduce unnecessary reporting of changes in office that are not the result of contentious or material matters. If such instances are covered in other aspects of the list, the removal of Matter 8 is timely given the increasing focus on the need to rotate auditors to ensure independence.

Q7. Matter 9 has been introduced to ensure that auditors and independent examiners report to the charity regulator as soon as they issue a modified audit opinion (including any emphasis of matter) or qualify their independent examiner's report and notify the regulator. Separate notification enables the matter to be considered for regulatory action and avoids any delay arising from awaiting the filing of the charity's accounts. This will be useful to the regulators as there have been a number of instances where matters have not been reported separately but simply included when the auditor's or examiner's report is qualified. Do you agree that the inclusion of this within the matters of material significance will assist auditors and independent examiners? Please give your reasons for this response.

In theory, the proposed change represents an ability for the regulator to take swifter action against those charities at risk. Given the resource issues experienced by the Charity Commission England and Wales, in particular, it is questionable as to the degree that the proposal will effect quicker regulatory intervention.

Q8. Auditors regularly offer guidance and areas for improvement to their clients. We recognise the important role this plays in ensuring charities meet their regulatory requirements. Where charities fail to act upon the recommendations made by their advisers this may be an indication of governance concerns and should be reported to the regulator. Do you agree that this matter should be included as a reportable matter? If not please provide your reasons for this.

Any matters reported to the regulator under this criterion should be restricted to the trustees' willingness and ability to meet their legal and regulatory duties. Any guidance that is not implemented that goes beyond statutory requirements should not automatically be reported to regulators as there may be good reasons why the trustees have decided not to follow that guidance immediately, or at all.

Q9. It is important for public trust in charities to ensure that all relationships are properly managed in accordance with charity law and where required disclosed in order to

maintain public trust and confidence. Matter 11 highlights the need for auditors and independent examiners to report to us where they believe that relationships are not managed well or are not correctly highlighted to users of the accounts. Do you agree that this should be included as a matter of material significance? If not, please provide your reasons why.

Conflicts of interests, both financial and non-financial, within the sector are a perennial problem, as evidenced by the number of times the issue is cited in regulatory reports on poor governance. This proposed matter may highlight those financial conflicts that need to be managed more effectively, but may do so at the cost of wider conflicts. It is debatable whether the financial review is an appropriate mechanism for reviewing and reporting on conflicts of loyalty and other non-financial conflicts within the trustee board.

Q10. While the reporting requirements have not changed significantly we have increased the areas identified as matters of material significance to provide clarification for those with reporting responsibilities. Do you agree that this aids clarification and is not a significant increase in regulatory burden? If not please provide your reasons for this.

The proposals do not appear to be a significant increase in the regulatory burden for auditors and independent examiners. For trustees, however, there may be an unintentional consequence in having to respond to auditors' and independent examiners' concerns and guidance with some urgency to avoid any unnecessary or disproportionate regulatory interest in the affairs of the charity.

Q11. In addition to the matters identified as reportable, we have received feedback that some further guidance around reporting requirements, including more practical examples of reporting matters of material significance would be useful. Do you agree that further guidance in this area is required and if so should this be provided by regulators and/or included in auditing standards?

Additional guidance on complex matters, especially in relation to the fulfilment of regulatory and legal requirements is generally helpful where the message is consistent and clear. It may be beneficial for specific guidance to be drafted for trustees, especially on those areas dealing with auditor/independent examiner guidance and the management of conflicts of interests.

I trust the above comments add to the development of the approach to reporting matters of material significance to the charity regulators across the country. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours sincerely,

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