

By email

8 March 2017

Dear Mr McKillop,

Charity Commission Consultation – Annual Return 2017

On behalf of ICSA: The Governance Institute, I am pleased to respond to your consultation on the annual return for 2017.

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 and 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 insights into effective practices across a range of organisations. Our members' wealth of expertise and experience, together with their detailed understanding of charity and company legislation and regulation, has informed our response to this consultation.

General comments

ICSA supports the Commission's aim of using improved technology alongside flexibility within documents such as the annual return in order to provide an improved experience for users – both charity trustees and the general public – as well as enhancing the Commission's regulatory functions. As the annual return is the primary point of contact between charities and the Commission, it is important that it provides the information which is required accurately but also that the administrative burden on charities is proportionate.

Specific questions

- 1. Do you agree that the fundamental information about charities should be kept up to date by charities throughout the year so that the charity register is accurate?**

We support the idea of charities being able to update their fundamental information held on the charity register throughout the year. It is sensible to facilitate changes to details as and when this becomes necessary, preventing any delay in the information being received and published. This will assist



charities in complying with the requirement in the Commission's risk framework to 'provide key public information, and to do so promptly'. It will also have a positive impact on the accuracy of the information held by the Commission as well as on its undertaking to ensure that the up-to-date register is freely available online. This, in turn, will help the public, potential volunteers, users, and donors or potential donors to have an accurate picture of the charities in which they are interested, may help to inspire trust and confidence in the sector, and will assist the Commission in ensuring transparency and accountability.

If trustees are able to make changes as they arise, their increased opportunity for interaction with the Commission will improve their familiarity not only with its legal and regulatory requirements, but also with its available guidance and services. This is likely to benefit them in leading a well-governed, sustainable and effective charity. The Commission might consider other ways in which these developments could be progressed, further buttressing their support of charities. For example, the provision of targeted automatic prompts when details are updated could direct the charity personnel making the change towards Commission guidance – such as CC3 – or other documents appropriate to new trustees.

As the Commission is committed to becoming a 'digital by default' regulator, the flexibility to change details when necessary seems appropriate. It is assumed, however, that the Commission has considered any difficulties regarding access that may have been experienced by charities with, for example, the move to online-only annual returns. Though access to online facilities is increasingly available, it is hoped that sufficient checks have been carried out that no charities, particularly smaller ones, are 'left behind' by the reliance on online filing.

2. Do you agree that the questions in the annual return should be structured so that they match the Commission's regulatory risk priorities?

We think it right that the Commission's activities mirror its regulatory risk priorities, enabling it to focus on meeting its objectives in those respects, thereby increasing public confidence in the role it carries out and consequently in the charity sector as a whole. This approach seems sensible and accords with the proportionate and risk-based approach of a modern regulator.

Grouping questions thematically according to the Commission's priority risk issues will ensure coherence and focus, but the categories need to be defined sufficiently broadly to allow for the inclusion of all questions of importance within the Commission's statutory powers and areas of responsibility.

Furthermore, though two charities of very different sizes may fall under a particular risk priority, the detailed questions which would be applicable under that theme might be significantly different for the two organisations. In such an instance it seems sensible that proportionality of approach is adopted.

3. Do you agree that more detailed questions within any theme should be targeted only at charities for which the information is relevant?

We are in favour of developments that reduce the administrative burden on charities whilst still enabling high standards of regulatory oversight. Requiring charities to answer detailed questions only if they are relevant to that organisation's work will save time, administrative costs and other resources. In some instances the savings may be small. In the absence of details of what further questions might be asked, it is difficult to determine at this stage how much of a saving will be available to charities by this move. This should become clearer following the Commission's review of the questions it asks. However, streamlining of procedures as far as is possible can be beneficial in its own right and less onerous processes will encourage engagement and thus compliance on the part of charities.

Of the five themes reflecting the Commission's current regulatory risk priorities (financial data, fraud and financial abuse, public trust and confidence, safeguarding, and terrorism and extremism), it could be argued that the first three categories apply potentially to all charities. In this respect it might still be appropriate to adopt a focus on those areas and organisations which pose the greatest potential risk, actual and reputational, to the wider charity sector.

It is self-evident that trigger questions will need to be conceived and worded in such a way that they do not direct charities away from relevant further questions. This will be more of an issue where the relevance is marginal, changeable or uncertain.

Whilst the structuring of questions based on activity rather than on income alone will enable the Commission to avail itself of information determined by what a charity does and with whom it comes into contact, which might be appropriate regardless of scale of operation, there may be a strong argument that the most effective and proportionate regulation would combine a theme-based and an income-based approach. For example, financial fraud may be easier to conduct in a smaller organisation. The reputational risk to the sector, however, would be less than if the fraud took place in a charity which is a large, household name. Although the misuse of charitable funds should be countered at every level, limited Commission resources mean that adopting a blanket approach to over 160,000 registered charities, and as many unregistered charities is unrealistic. As such, the Commission may wish to assess priority areas for its resources.

One aspect which is not clear at this stage in the process is what the Commission plans to do with the data it collects from the detailed questions should they elicit a significant amount of information. Trustees might feel dissatisfied if they are required to provide additional data but without a clear sense of how it will be used and for what purposes. The Commission may wish to set out its proposals for handling and utilising this information.

I hope that these comments are helpful and contribute to your thinking on changes to the structure of the annual return. Should you wish to discuss them further or require any clarification, please feel free to contact me.

Yours sincerely,

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