



The Governance
Institute

By email: The Charity Commission

23 November 2017

Dear Sir/Madam,

Charity Commission Consultation – Annual Return 2018

On behalf of ICSA: The Governance Institute, I am pleased to respond to your consultation on the Annual Return for 2018. 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 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 governance issues. 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

In general, we agree with many of the proposed questions in the consultation document. It is important that the Annual Return, as the principal point of contact between the Commission and charities, provides sufficient information to enable the regulator to carry out its functions, but does so with as light a burden to individual organisations as possible. It is pleasing to see the Commission trying to strike this balance, both through attempting to keep the amount of information required to a minimum and targeting additional questions at larger, more complex charities or to those for whom they are relevant.

The burden could be eased for charities completing the Annual Return in those areas where the information requested is held by other Government or public bodies, such as HMRC, the Fundraising Regulator, or central and local government bodies who award grants and contracts to charities. Effective sharing of this data, via appropriate protocols, could reduce the need for the onus to be placed on individual charities.

However, we have highlighted a number of areas in our responses below where we feel that the questions which are proposed do not go far enough or would provide insufficient detail to address the



areas of focus within the four stated risk priorities. We understand the need to weigh the Commission's regulatory duties against what it is practical and reasonable to ask charities to provide, and we have attempted to justify additional requests for information with reference to the benefit they will bring to the provision of effective regulation and also protection of trust and confidence in the sector. We anticipate that the information which is being asked for should be quickly and easily accessible to charities if they are well-organised and maintain accurate and up-to-date records. Whenever additional questions are added to the Annual Return, all charities will require some administrative adjustments which will impact resources. Again, this is of principal concern for smaller organisations. However, once processes are in place for capturing this data, the administrative burden ought to decline.

On some issues covered in the consultation, such as remuneration or government contracts, we have highlighted a concern that the Commission is requesting information in the Annual Return on topics which are sensitive as regards public trust and confidence, but is offering little indication that the figures will be published alongside material which sets it in context. This raises the possibility of providing data which might be used against the reputation of individual charities, or the sector as a whole, without enabling the provision of any justification or explanation as to why it is in a charity's interests to pursue a particular policy

Responses to specific questions

Professional fundraisers

Q1 Do you agree with the proposal to introduce this series of questions about the arrangements which charities have when they work with professional fundraisers?

Yes. It is sensible to align the information required about charities' relationships with professional fundraisers with that required about relationships with commercial participators. This would provide consistency and assist the Commission in providing effective regulatory oversight. As it is responsible for ensuring that charities act within the legislation, and has appropriate powers of intervention, the Commission would be acting in accordance with its role in this regard, particularly given the changes effected by the Charities Act 2016. However, we are of the opinion that there may be scope for the Commission to ask further questions which would seem natural corollaries to those proposed. These are outlined below.

Q2 If you disagree it would be helpful if you could give the reasons why.

Charities which have their accounts audited are required since the Charities Act 2016 to provide a statement in their annual report of fundraising activities by or on behalf of the charity and whether a professional fundraiser or commercial participator is used, as well as any voluntary schemes or standards adhered to and steps taken to protect vulnerable people and other members of the public.

From a regulatory point of view, we would raise the possibility that the Commission might benefit from asking further questions in the Annual Return, indicating responses to the requirements of the 2016 Act, particularly those which might trigger the Commission's concerns, such as the number of complaints received, or failures to comply with schemes regulating fundraising. We appreciate that keeping the regulatory burden as light as possible is of considerable importance to the Commission and charities alike and we are keen to see an appropriate and workable balance struck. However, fundraising practices present an ongoing risk to the sector and play a significant role in the relationship between charities and public trust and confidence.

The 2016 Act is important in ensuring that conduct in this area is improved but the Commission is also in a position to exert influence. Given that an interest is expressed in charities' relationships with professional fundraisers and commercial participators, we suggest that consideration be given to making this interest effective. We note that the 'yes/no' question as currently framed does not give any indication as to the quality of the contracts signed nor any monitoring of the relationship undertaken by the charity.

Q3 We intend to publish the information resulting from this question on the charity's public register page. Do you consider that publishing the information resulting from this question would aid general transparency and accountability?

As charities whose accounts are audited are required to report this information in their annual report, the impact on transparency for these organisations will come from the ease of access which will result from publishing it on the Commission's public register. There will be a more obvious impact on transparency where charities falling below the audit threshold will have this information made public, which might not otherwise have been the case.

Although eventually the Fundraising Regulator might become the principal repository of data relating to fundraising, at present its coverage is significantly smaller than the Commission's, with 1400 levy-paying charities and 1000 other organisations having signed up under the registration scheme as of November 2017. Moreover, the Commission has a broader remit and powers. The Charity Commission collecting this data for display on the public register would therefore appear to offer increased openness and accountability on this point and would provide a central, one-stop location for information which interested parties might seek.

Though, for larger charities, the information being sought will be available in their annual report, there are benefits from an openness perspective of enabling the public, current and potential funders and other stakeholders to see that suitable contracts are in place with fundraising partners. This will be particularly the case should the areas for supplementary questions which we suggest also be included. As fundraising practices remain of considerable interest to the public and form one of the principal points of contact they have with charities, providing information of this nature in an accessible form has the potential to positively impact perceptions and confidence on this issue.

Q4 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

There would appear to be clear potential here for information currently provided to the Fundraising Regulator to be duplicated for the Commission. That said, the Fundraising Regulator's coverage is significantly smaller than that of the Commission. An effective data-sharing relationship between the Commission and the Fundraising Regulator will mitigate the duplication of reporting.

Charities with audited accounts are required to provide a statement detailing this information in their annual report.

Q5 If your charity would have to provide this further information about professional fundraisers, is there a cost in putting this together?

As charities with audited accounts will have to provide this information in their annual report, the additional cost would be minimal. If those falling beneath the audit threshold are required to provide the information, that would entail some effort and cost, but this may not be particularly high – and in some cases negligible – especially if the only information required is to respond to the question proposed as opposed to the fuller list of questions which we might suggest for consideration. An organised, well-managed and well-governed charity should be able to access and report this information swiftly. Indeed, it could be an indicator of poor governance if this proves unduly burdensome.

Income from central/local government

Q1 Do you agree with the proposal to revise the questions which we ask about the income which charities receive from central and local government as shown above?

Yes, though we are of the opinion that the proposed additional questions do not provide sufficient information to enable the Commission to fully identify potential risks in charities' income, nor to fully understand in detail the funding models within both the sector as a whole and in individual charities. Answers to the questions proposed will provide the Commission with information on the number and

total value of contracts and grants which a charity receives. From this information it is possible to calculate the average (mean) value of each.

From a risk perspective, however, it does not provide an indication of the preponderance within a charity's income stream of either large or small grants and contracts, unless they are few in number. As noted in the consultation document, being heavily reliant on a single or small number of large grants or contracts poses a risk to the charity. The Commission might want to consider the value of a more sophisticated breakdown of the value of grants and/or contracts and the percentage of the charity's income which they represent. The more detailed questions which are proposed about income from overseas suggest that it would not be a significant departure in practice to ask similarly in-depth questions on the issue of contracts or grants.

Q2 We intend to publish the information resulting from this question on the charity's public register page. Do you consider that publishing the information resulting from this question would aid general transparency and accountability?

We are aware of the views of some about the relationship between government funding for charities and its perceived effect on their freedom of action, as well as more negative views of the client-contractor dynamic, despite charities delivering much-needed service provision.

There are concerns that a central register of grants made to charities might have a prohibitive effect on government funding made available to the sector and also strengthen criticism of the voluntary sector's relationship with central and local government. If detailed questions were asked of charities on this issue then there is the possibility that effectively the same information would be dispersed through the Commission's public register. As is the case when the information is also available through individual charities' accounts, the potential objection becomes one of degree rather than kind: whether the data being held in multiple locations is more or less preferable than it being easily accessed from a central point of contact.

Q3 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

As noted in the consultation document, this information is required of some charities in their accruals accounts. Under SORP a charity must provide an analysis of the material components of income within each sub-heading of the statement of financial activities. Both government grants and contracts should be identified in these entries.

HM Treasury has made a commitment to create a central cross-departmental register of voluntary organisations in receipt of government funding. Additionally, it is mandatory for local authorities to publish details of all expenditure over £500 on at least a quarterly basis, including payments as parts of grants to voluntary, community and social enterprise groups. There is therefore the potential for this information to be available from the commissioning or grant-making side if effective information sharing processes are in place.

Q4 If your charity would have to provide this further information about grant and contract income from central and local government, is there a cost in putting this together?

There will inevitably be an administrative cost to capturing this information in the relevant format. However, even the smallest charity should be able to pull the information together relatively quickly, through its minutes, accounts and project reports or returns to the funder. If the Annual Return, as we suggest, were also to ask them to provide statistics around income ratios, for example, this might be a little more challenging and may require a Commission-approved formula in order to have some consistency and make figures comparable.

Gift Aid

Q1 Do you agree with the proposal to introduce this question about Gift Aid?

We understand the Commission's wish to maintain oversight of Gift Aid claims, ensuring, for example, that amounts being claimed correspond to those which might be expected of a charity of a particular size, scope, activities and income. It is not clear, however, that the information being sought, outlined in the consultation document, will be obtained through these questions. Effective oversight of Gift Aid claims will help to identify where trustees are taking their duties seriously in this one area and will offer some help to guard against abuse or mismanagement. In terms of income-related risk, this would principally be of use only if future changes to the Gift Aid scheme were planned which might affect the amounts which can be claimed, rather than those announced in the 2017 Budget and due to come into effect from April 2019.

As the Commission is aware, there is a difference between what a charity claims in Gift Aid and what is received. Many smaller charities will not claim Gift Aid and not every organisation is registered with HMRC. Moreover, there are reasons why donors may not consent to Gift Aid being claimed, or they may be ineligible to have it claimed on their donations.

Q2 We intend to publish the information resulting from this question on the charity's public register page. Do you consider that publishing the information resulting from this question would aid general transparency and accountability?

We do not feel that there will be a material impact on transparency and accountability by publishing this information on the public register. However, we see no drawback in doing so. Indeed, it may raise awareness of the availability of Gift Aid and encourage its uptake among donors.

Q3 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

The Commission should work with HMRC to ensure that the duplication of reporting is kept to a minimum. We are aware that the HMRC reporting cycle does not correspond with the timetables to which charities may work. Furthermore, the information to HMRC is presented on a cash basis, whereas the majority of charities will complete their accounts on an accruals basis. This may present problems regarding the sums presented when taking particular years in isolation.

A charity might only separately disclose Gift Aid claims under charity SORP where it has trading subsidiaries which choose to Gift Aid their profits to the parent charity. In this case there would be a brief disclosure within the notes to the financial statement.

Q4 If your charity would have to provide this further information about Gift Aid, is there a cost in putting this together?

There will be some administrative cost in providing this information to the Commission in addition to HMRC. However, a well-resourced and well-managed charity should not find this excessively onerous.

Income received from outside the UK

Q1 Do you agree with the proposal to introduce this series of questions about the income which a charity receives from countries outside the UK?

Yes, we agree that obtaining information about income from outside the UK is important for the Commission to assess risks to charities. As the purpose of these questions is to identify potential areas of risk, the slight geographical misalignment between the Commission's jurisdiction and the UK-wide scope of the information sought is not problematic.

There is a strong case for charities to 'know' their donor as they 'know' their beneficiaries. There may be value, however, in defining more explicitly what is meant by income from outside the UK. Small donations in foreign currency, for example, might be construed as such.

The breakdown of a charity's income by country, type of source and amount reinforces the point we made earlier in response to the questions on central and local government.

Q2 We do not intend to publish information resulting from this question on the charity's public register page. Do you agree that data provided by individual charities in response to this question should not be published?

We agree that the information gathered from these questions should not be published. As the primary reason for collecting this data is to allow the Commission to identify potential risk, making the information publicly available is not necessary. Arguments may be offered that the public and other stakeholders might have a legitimate interest in overseas sources of income, particularly when these account for a large proportion of the charity's income. However, we do not see that this should override the need to handle this issue discreetly and sensitively. This may be particularly the case where certain charities have natural links with and an operating focus on particular geographic areas.

Q3 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

It may be that significant or high profile donations from overseas are made publicly available, at the donor or charity's request, via promotional material or other reporting requirements,

Q4 Do you agree that all charities with an income in excess of £10,000 should be asked these questions about income from overseas?

This could be problematic, especially without a clearer definition of what is meant by 'overseas income'. As noted, difficulties may be experienced by smaller charities where small donations are made and cannot be traced to individuals and so an income threshold may be appropriate. Reporting difficulties could be mitigated by excluding, for example, foreign currency collections which represent small values. This is not clearly done in the current proposed questions.

Q5 If your charity would have to answer these questions about income from overseas, is there a cost in putting this together?

We accept the point made in the consultation document that whilst this information is not required in the requested format in a charity's accounts, it should nevertheless be relatively readily available to those larger organisations who maintain accurate accounting records. It may nevertheless require more adjustment than do some of the questions proposed elsewhere in the consultation. For some charities, especially smaller ones, new administrative systems may need to be adopted to be able to answer the question. It may be necessary to define more precisely what the Commission is seeking to identify with these questions.

Q6 We propose to ask for the value of the income from each question to be given in Pounds Sterling. Do you agree that this is appropriate?

We agree with the proposal to ask for values to be given in GBP. Fluctuations in exchange rates are potentially problematic, particularly if attempting any longitudinal comparisons which would then require historic rates to be calculated.

Q7 Some charities may find it easier to report the income received in US Dollars. Do you think that there should be an option to report in either Pounds Sterling or US Dollars?

As for Q6, we are of the opinion that providing figures in GBP is useful for ease of interpretation and comparison. It may be necessary to seek additional information as to the exchange rate used to

calculate the value of income received in the given currency. Adopting a uniform unit of currency will aid consistency and eliminate the need for double conversions which would introduce multiple exchange rates into the calculation.

Employee salaries

Q1 Do you agree that charities should be asked for this information about staff pay?

We agree with the principle of promoting transparency on staff pay and in particular on executive pay. This is an issue at the forefront of the public's perception of charities and we are of the view that openness is key to gaining and retaining their trust in the sector.

Having a separate question solely for CEO pay might be more problematic, given that this identifies an individual. Moreover, as the consultation document recognises, the term CEO is not universally adopted and in any case the individual fulfilling that role may not be, for good reasons, the highest paid employee in an organisation. Is the Commission interested primarily in the salary of the most senior executive officer or the employee with the highest salary? Furthermore, no distinction is made in the questions being asked between salary and total remuneration packages, including performance-related payments, pension contributions or service provision. In addition, there may need to be some adjustment of the question relating to staff remuneration: for example, to allow for full-time/part-time equivalents.

Q2 Do you have suggestions for the framing of the questions and guidance to help charities recognise that they are within the intended scope of these questions?

Public sector organisations have specific requirements regarding the reporting of senior executive remuneration, and the NHS offers guidance on payments for 'Very Senior Managers' (VSMs). The Commission may benefit from reviewing this guidance, alongside reporting requirements for public bodies, in order to gain insight as to how the questions could be appropriately framed for charities.

Q3 We intend to publish the information resulting from this question on the charity's public register page. Do you consider that publishing the information resulting from this question would aid general transparency and accountability?

We would be hesitant over publishing details which can readily identify individuals – e.g. CEO – even though this may be information provided elsewhere. There is a case to be made for dropping the CEO category back into the main set of salary bands, particularly as the CEO is not necessarily the highest paid employee in an organisation. Charities are required to report in their accounts a breakdown and total amount paid to key management personnel and to provide an indication of the number of staff paid over £60,000pa in bands in their annual report. Some also disclose the information for their chief financial officer, chief operating officer and other executive directors, some broken down by job title, some as a group of executives. The Charity Governance Code (recommended practice 7.6.4) and the NCVO report into executive pay recommend the publication of senior staff remuneration levels in larger organisations in the charity's annual report and on its website.

We note that concerns do exist that the publication of remuneration will give impetus to wage inflation. This is an effect which has been observed in other sectors and there is no reason to think that a similar experience would not apply to the charitable sector.

Executive remuneration remains a sensitive issue and the presentation of data relating to pay levels requires careful handling. The sector can help itself in this regard by being open and accountable, explaining to the public why charities offer the packages they do and demonstrating the value which recipients bring to the organisation. The Commission can play a role in this dialogue. When charities publish executive remuneration in their annual report or website, they are able to set the figures in context, with qualitative detail alongside the empirical data. The information which it is proposed to add to the Annual Return would not be accompanied by any narrative describing the context of pay levels nor their impact on the charity's performance. This might be to some extent mitigated if the details, when published on the Commission's website, were accompanied by links to the relevant part of a charity's

annual report or accounts, allowing the reader to access, where these are presented, the organisation's remuneration policy, performance and impact reports, and statements from the remuneration committee (where these exist).

Q4 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

Charities are required to provide this requested information in their annual reports and accounts. Larger charities are required under FRS 102 SORP to disclose their arrangements for setting the pay and remuneration its key management personnel and any benchmarks, parameters or criteria used in setting their pay. Some also publish data on their website – as in the 'two clicks to clarity' recommendation in the NCVO report.

Q5 If your charity would have to answer these questions about staff salaries, is there a cost in putting this together?

As 80% of registered charities have no staff, this will not be an issue for the smallest organisations. Whilst there will be some administrative costs for larger charities, these should not be unduly burdensome in a well-run charity as the information will be readily accessible.

Payments to trustees

Q1 Do you agree that charities should be asked for this further information about trustee payments?

Yes, we agree with the proposal to require information about payments made to trustees, given that this has the potential to lead to a breach of duties and as a result undermine public confidence. It is not clear, however, that the questions, as drafted, provide the information which the Commission may require. Simply framing the questions to require 'yes/no' responses may highlight areas at which the Commission might wish to take a closer look. However, it does not give any indication as to the frequency with which such payments were made, their value or the number of trustees to whom they were made. Nor do the proposed questions seek information which may be of value, such as loan repayments to trustees. We appreciate that the Commission is anxious to avoid increasing the regulatory burden on charities. However, there is a feeling that natural follow-up questions to those proposed are missing. The Commission would certainly want to ask them upon receiving affirmative replies to these questions about payments to trustees.

As with the proposed questions on staff pay, we are left with the concern that the Commission may seek and publish empirical data on a difficult subject, without setting it in context. It is not immediately obvious that this will be helpful to some of the discussions underway within the sector.

Q2 We intend to publish the information resulting from this question on the charity's public register page. Do you consider that publishing the information resulting from this question would aid general transparency and accountability?

Publication of the fact of payments to trustees without any context or rationale for it could present a misleading picture to the public who are still, to a large degree, uncomfortable or at least unfamiliar with the grounds for trustees receiving payment. As noted in our earlier response, where it is disclosed that a charity does pay a trustee or trustees it is helpful to the public's understanding of the arrangement that justification be made available. When the principle of voluntary trusteeship still retains a strong hold on public perception, the exceptional cases where payment is made require an explanation of the impact generated which make this step beneficial to the charity in pursuit of its purposes. It does not appear that this will be provided under the present proposals.

It is not clear from the consultation document whether the data provided in the Annual Return will be presented on the public register in aggregate form or broken down for each trustee individually.

Q3 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

A charity which is open and accountable will make this information available in its published documents. Those that pursue strong governance practices will accompany this with the appropriate narrative of the impact thereby provided, and the relevant policies relating to trustee payments, including possibly a precis of the business case developed to underpin the argument to pay trustees and any ongoing review of the arrangement.

Q4 If your charity would have to answer these questions about trustee payments, is there a cost in putting this together?

As many charities will not be in a position to pay trustees, the increased administration should affect only a small number of charities. For larger charities this should not pose a problem as they will in theory have adequate accounting records and procedures in place.

Expenditure in countries outside England and Wales

Q1 Do you agree with the proposal to introduce this series of questions about a charity's use of alternative/informal financial systems to hold or move charity money in countries outside England and Wales and the ways in which it manages risk?

The rationale behind this question being asked seems sensible: to ascertain whether charities are using higher risk methods of transferring money. However, the question as currently phrased lacks clarity. For example, the option relating to the use of cash couriers is not clear as to whether this applies to transferring funds out of England and Wales or as part of internal transactions in the country or countries where the charity operates. Additionally, in some regions this might be considered a more normal way in which to conduct business, even though the Commission advises against it as presenting issues relating to fraud, money-laundering and other potential criminal activity. The Commission provides guidance on this and the questions should reflect that guidance.

Is the Commission satisfied that replies to Questions H.5 and H.6 will provide the information which it seeks in order to carry out its regulatory function or would the opportunity to provide more detailed responses be more useful? Question H.5, for example, does not require the charity to provide any detail as to the nature of the monitoring controls it has in place. Nor does it enquire as to whether the trustees are satisfied with the controls which are in place. An equivalent question is asked of the risk management policy and procedures in Question H.6.

There may be value in the Commission asking a question as to how many times this took place during the year. It seems that the question relating to the value of transaction refers to the total transferred by that method for the year. Asking for the value per transaction may provide detail which is of interest and utility, though may present an administrative challenge for some charities.

Q2 We do not intend to publish information resulting from this question on the charity's public register page. Do you agree that data provided by individual charities in response to this question should not be published?

We agree with the proposal to not publish this information for individual charities on the public register page. This assumes, of course, that the Commission monitors closely the situation, producing reports for the public when relevant, making use of sector-wide data in aggregated form.

Q3 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

The charity's internal procedures might provide further information on how the charity manages such transactions. In such a case, the Commission may want to seek additional detail as to the policies in place, including a description or the provision of copies of the policies or a link to them.

Q4 If your charity would have to provide this further information about its use of alternative/informal financial systems to hold or move charity money in countries outside England and Wales and the ways in which it manages risk, is there a cost in putting this together?

As above, this information ought to be available to charities which are well managed and which maintain detailed and accurate accounts and therefore not unduly difficult to source and present the relevant information.

Q5 Some charities may find it easier to report the income received in US Dollars. Do you think that there should be an option to report in either Pounds Sterling or Dollars?

For the reasons given in response to Q6 and Q7 in the section on income received from outside the UK, we suggest that the values are presented in GBP.

Land and buildings

Q1 Do you agree with the proposal to ask charities which own or lease land and/or buildings if they receive rate relief?

Yes. We do not consider it to be burdensome to provide an answer to this question. However, in order to tackle fraudulent rate relief claims further investigatory action will be required.

Q2 We do not intend to publish information resulting from this question on the charity's public register page. Do you agree that data provided by individual charities in response to this question should not be published?

We do not take a strong position on the publication of this information. It seems a reasonable proposition to not make this information available. However, we do not anticipate a problem were it to be published.

Q3 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

It is assumed that those authorities granting the relief will have details of the relief claimed and granted in any given period.

Q4 If your charity would have to provide this further information about rate relief, is there a cost in putting this together?

As noted above, whilst the provision of this information will provide some additional cost, this should be minimal where a charity is well-managed and keeps accurate, up-to-date records.

Trading subsidiaries

Q1 Do you agree with the proposal to ask charities about whether trustees are also directors of the subsidiary company?

Yes, we agree with this proposal. The Charity Governance Code recommends (2.4.5) that 'the formal relationship between the parent charity and each of its subsidiaries is clearly recorded and the parent

reviews, at appropriate intervals, whether these arrangements continue to best serve the organisation's charitable purposes'. We consider that this question falls within the scope and spirit of this recommendation.

Q2 Do you consider that this question should be widened in scope to cover other types of non-charitable organisation that have a close link to the charity?

There may be some merit to this suggestion. Certainly, it could help to flag up areas of concern regarding the independence of a charity and to identify the 'controlling mind' of an entity. It is important, particularly from a public perception perspective, to protect and reinforce the independence of charities. What might be seen as an unduly close relationship between the charity and a company could prove a deterrent to engagement.

It may also be of value, if not provided in the section on payments received for being a trustee, to seek information as to whether any individuals are paid for serving as a director of the subsidiary.

Q3 We intend to publish the information resulting from this question on the charity's public register page. Do you consider that publishing the information resulting from this question would aid general transparency and accountability?

Yes. For the reasons noted in Q2: there can be issues about commercial entities establishing charities, but then controlling the charity and the projects it supports or funds. This can have an impact on the public's trust and confidence. Stating clearly and openly where there is a crossover of membership gives the public access to the nature of the relationship between the charity and other organisations. They are then in the position to determine whether or not they feel that this relationship is appropriate or is damaging to the charity's activities or independence.

Q4 Are you aware of any other sources from which the Commission can obtain the information being sought in this new question?

Information in the formal reporting arrangements of the parent or subsidiary entity should provide information relating to director positions and remuneration. There may also be similar information on the entity's website.

Q5 If your charity would have to answer this question about trading subsidiaries, is there a cost in putting this together?

As the Charity Governance Code recommends, the formal relationship between a charity and its subsidiary should be clearly recorded. This will include any overlap between the board of trustees and the subsidiary's board of directors. This information should be readily available to the charity, not least as part of its conflict of interest policy, and so providing it in the Annual Return should not be problematic.

Safeguarding

Q1 Do you agree with the proposal to ask charities further questions about safeguarding?

Yes. For the sake of clarity, it might be advisable to amend Question K.1 to read: 'Have DBS checks been carried out on all these individuals?' This is implied in the current wording, but the question may benefit from this being explicit. The list of questions in Annex C of this consultation which will be transferred to the UCD includes 'Does the charity have a written safeguarding policy?' There may be some value to the Commission when assessing risk to pose an additional question as to whether trustees, staff or volunteers who work directly with vulnerable beneficiaries have undertaken training covering such interaction. Ensuring that charity points of contact are DBS checked is the bare minimum that charities ought to do. Of equal importance are the policies, training and culture which are in place as these create the environment whereby appropriate behaviour is maintained and, in the event of potential adverse behaviour, this is reported and dealt with.

Q2 We intend to publish the information resulting from this question on the charity's public register page. Do you consider that publishing the information resulting from this question would aid general transparency and accountability?

There is a legitimate interest in ensuring that those who work directly or unsupervised with vulnerable beneficiaries are DBS checked. There should be no issue with such information being made available.

Q3 Are you aware of any other sources from which the Commission can obtain the information being sought in these new questions?

The consultation document states that these questions will be asked only when not required by another regulator. Has a method of identifying such instances been established? Effective sharing of data with those regulators will make the information available to the Commission, without requiring charities to provide it.

Q4 If your charity would have to answer these questions about safeguarding checks, is there a cost in putting this together?

Ascertaining whether trustees, staff or beneficiaries who come into direct contact with vulnerable individuals without being accompanied by an appropriately cleared 'supervisor' have undergone DBS checks – or completed training – should not prove particularly onerous for charities. Nor, in any instance, can objections on the grounds of excessive administrative burden be employed satisfactorily in a matter of this importance.

Closing comments

In giving our responses to this consultation, we have been mindful of the need to balance the collection of the information the Commission requires to fulfil its regulatory function, and the burden which may be placed on charities in providing it. This is of particular importance when considering those organisations at the smaller end of the spectrum who necessarily lack the resources and infrastructure to devote considerable efforts to completing complex Annual Returns.

With this in mind, it will be essential for the Commission to ensure that questions are appropriately targeted, subject to suitable thresholds of organisation size or income, and to take every possible step to retrieve the information required from other sources. This should be the case particularly where that information is already gathered by government departments. Having in place appropriate information-sharing systems between departments will have a welcome impact on the amount of information which charities must otherwise provide anew in the Annual Return.

We hope that where we have provided suggestions for further questions to be included in the Annual Return these are sensible and proportionate. Whilst we do not wish to unnecessarily increase the burden on charities, we recognise that there are certain areas which are of considerable importance to the Commission's role and also to public confidence in the sector. We feel that in some cases the proposed questions touched on these issues, but did not pursue the opportunity to ask important and legitimate further questions.

We hope that these comments are helpful and contribute to the Commission's deliberations on the changes to be made to 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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