

# SocialEconomy

A quarterly bulletin of information for charities,  
voluntary organisations and social enterprises

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## Charities...

# Reporting serious incidents

Charities 'must get better at reporting serious incidents' say the Charity Commission. The Charity Commission has revised its guidance for trustees on reporting serious incidents to it. It has identified several 'zero tolerance' issues where the issue itself causes such serious concern that the Commission would want to give it their immediate attention. The Commission requires trustees to report to them immediately, in no particular order:

- connections to proscribed (banned) organisations;
- charity links to or support for terrorism, financial or otherwise;
- misuse of a charity to foster criminal extremism;
- fraud and money laundering;
- abuse of vulnerable beneficiaries;
- not having adequate measures in place to protect vulnerable beneficiaries;
- sham charities, set up for illegal or improper purposes.
- trustees decide that the incident presents a serious or significant risk to the charity, its beneficiaries, reputation or assets; or
- the internal risk assessment of the incident concludes that the charity should act to avoid a serious or significant risk to the charity, its beneficiaries, reputation or assets.

In addition to always reporting any zero tolerance issue, the Commission has said that it would also normally expect trustees to report an incident if:

- the incident is also reported to the police or other statutory agencies;

Trustees may wish to seek legal advice to ascertain whether there is sufficient information to suggest that they have a reportable incident and the effect of reporting on operational matters before advising the Commission. The new guidance on serious incidents and how to report them can be found at:

[www.charitycommission.gov.uk/investigations/rsinotes.asp](http://www.charitycommission.gov.uk/investigations/rsinotes.asp)



## Affordable Home Ownership

Social Economy has previously drawn attention to the joint HMRC / Charity Commission Guidance on Affordable Home Ownership.

This "must-read" guidance for charities, including housing associations and community land trusts, selling property for affordable home ownership was updated further in May

2009. The provisions and criteria for beneficiaries are not necessarily the same as Government priorities. Charities need to follow the guidance carefully.

# Gift Aid - changes afoot

## Reclaim period to be reduced

Currently, charities have up to six years from the date of a gift to submit claims for Gift Aid. This time limit is to reduce to four years on 1 April 2010. As a result, all future claims will have to be made within four years of the end of the tax year that the claim relates to. Therefore, claims made during the 2005/6 tax year will now have to be made by 5 April 2010, instead of 31 January 2012, as they would have previously.

HMRC explain that the time limit has been changed as a result of Schedule 39 of the Finance Act 2008, which aims to update and align the Income Tax, Corporation Tax, Capital Gains Tax and VAT regimes. The effect on charities is that they will have less time to make such claims. Charities should

therefore consider now whether they can claim Gift Aid, to ensure that opportunities are not lost.

More information can be found at the following link:

[www.hmrc.gov.uk/CHARITIES/gift\\_aid/reclaim.htm#7](http://www.hmrc.gov.uk/CHARITIES/gift_aid/reclaim.htm#7)



## Planning for higher earners

Where a cash gift is made to a charity, the tax (at the higher or basic rate, depending upon which rate the donor pays tax) can be reclaimed to increase the value of the donation.

It was announced that, from 2010-2011, there will be an additional higher rate of income tax of 50% for taxable income over £150,000. For donors falling within this band, an extra 10% will then be able to be claimed.

However this is lessened to a degree by the reduced basic rate, which went from 22% to 20% from 6 April 2008. Currently, there is a

transitional relief which enables an additional 2% to be claimed back but this is due to end after the 2010-11 tax year.

It has been suggested that some charities may wish to postpone major donations until the new rates come into effect, in the hope that donors who pay tax at 50% can claim the additional relief and pass it on to the charity.

## Substantial donor rules

Previously, a substantial donor was anyone who made tax relievable gifts of at least £25,000 in 12 months or at least £100,000 in six years. This threshold has now been increased from £100,000 over a six year period to £150,000 over the same period. The £25,000 annual threshold is to continue.

An informal consultation is currently underway to develop new tax avoidance rules based around an anti-avoidance purpose test. This will, hopefully, prevent innocent charities caught by the substantial donor legislation from being penalised in future.

In the meantime, the substantial donor rules continue to apply, although it is likely that HMRC will only seek to enforce deliberate tax avoidance, rather than inadvertent breaches of the rules, provided there is no detriment to the charity involved.

# What makes a good grant?



New Philanthropy Capital (NPC) have researched grant-making practices and produced a report called *'Granting Success'*. This report looks at grant structure, focusing on size, length and level of restriction. The key findings can be summarised as follows:

## Size and Length of Grant

NPC consider that, if you are making a grant, you should commit to at least three years unless the grant is for a one off term or project.

If you are aiming to reduce risk by giving a number of smaller grants, you should be wary of compromising quality and reducing impact. According to the report, a better approach is to conduct adequate assessment to enable larger grants to be given. NPC believes that risks are inevitable and should be managed rather than avoided.

## Restrictions

Restrictions can limit the effectiveness of the grant, make it more onerous to manage and may cause charities to construct projects that they think funders will

find attractive. NPC favours unrestricted funding and feels that a well run charity will be the best judge of how to spend the money. Unrestricted funding is required in order to deal with unexpected expenses, emergencies or change of circumstances.

Restrictions may be needed where the charity you are funding does a large amount of work other than the type that you are wanting to fund, to protect reputation by retaining control of what the funding is spent on or to influence the charity. In the event that you feel restrictions are required, the more flexible they are the better. Limiting to certain beneficiaries or outcomes is usually less onerous than a specific output restriction e.g. the production of a report. The full report can be accessed at [www.philanthropycapital.org](http://www.philanthropycapital.org)

# Are Charities sustainable?

This question is not posed from a financial but from an environmental perspective, but the two may be linked. The Stern Review, [www.sternreview.org.uk](http://www.sternreview.org.uk), confirms the old proverb "for the want of a nail the kingdom was lost". The Charity Commission and CFDG have both now issued guidance to assist charities tackle the environmental agenda.

The Charity Commission publication *Going Green: Charities and Environmental Responsibility* highlights the new duty on trustees of charitable companies to have regard to the environment in their decision making. It also gives guidance to non-company charities about how trustees can undertake activity to remedy for want of a nail in their operations. Non-environmental charities can improve their operations environmentally, if it is in the interest of maintaining support from their donor base or if it can assist the charity over the long term in its operational activities. [www.charity-commission.gov.uk/publications](http://www.charity-commission.gov.uk/publications)

The Charities Finance Directors Group have issued a publication entitled *Sustainability in Practice: monitoring and reporting*. This is a comprehensive tool kit for addressing operational activities and administration of a charity, analysing how a charity might be more sustainable, monitoring the impact and then reporting on it. It is therefore a valuable resource for trustees and finance personnel of a charity.

[www.cfdg.org.uk](http://www.cfdg.org.uk)



## CIO - postponed until 2010

The Charitable Incorporated Organisation, the new structure designed specifically for charities, which aims to combine the advantages of a corporate structure without dual regulation of Companies House and the Charity Commission, has been moved back and will now not be introduced until mid 2010. The new structure should be particularly useful for charities which are currently unincorporated.

# Companies...

## MPs' expenses, public authorities and Data Protection

One can be forgiven for thinking that there was a certain element of hubris in the May parade of MPs' (dirty laundry) expenses by the Daily Telegraph following the Government's loss of computerised personal data on so many of its own employees. But, it perhaps obscures the underlying legal dichotomy of when it is right or not for a public authority to publish personal information. Social Economy has previously considered the times when a charity might itself be considered a public authority, which are, fortunately, fairly rare.

The case of the Corporate Officer of the House of Commons v Information Commissioner and Others 2008 EWHC 1084 was at the heart of the disclosure process. The case involved consideration of whether the disclosure of personal information about MPs'

expenses was a breach of the first data protection principle that information must be processed fairly and lawfully and must meet at least one of the conditions of Schedule 2 of the Data Protection Act 1998.

The case turned on condition 6(1) of the Schedule which requires a

balancing exercise. It stipulates that "The processing is necessary for the purposes of the legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

The Information Tribunal ordered the disclosure of the MPs' expenses. It concluded that whilst it was prejudicial to the MPs' personal interests the importance of financial

accountability and transparency in the expenditure of public money was so compelling as to outweigh the prejudice to MPs. Readers will not be surprised at the description of the additional cost allowance system as "a recipe for confusion, inconsistency and the risk of misuse."

Contractors with public authorities will need to bear this judgement in mind in requesting a limitation on disclosure of a charity's information submitted as part of the tendering or monitoring process.



## Equality Bill

The Equality Bill was introduced in the House of Commons on 24 April 2009 and was published on 27 April 2009. The Bill will consolidate the various statutes and regulations on discrimination and equal pay. The aim is to harmonise discrimination law, and to strengthen the law to support progress on equality.

Amongst other things, the Equality Bill:

- imposes a new equality duty on public bodies by requiring them to consider the needs of diverse groups in the community when providing public services.
- makes it unlawful to discriminate against people on the grounds of their age when providing goods, services and public functions.
- imposes a new public sector duty to consider reducing socio-economic inequalities.
- contains a power to require employers with 250+ employees to report on the gender pay gap.

"A Fairer Future - The Equality Bill and other action to make equality a reality" explains what the Bill aims to achieve and can be viewed at [www.equalities.gov.uk](http://www.equalities.gov.uk)

## Corporate Manslaughter

The Corporate Manslaughter and Homicide Act 2007, which came into force on 6 April 2008, enables organisations to be prosecuted where a serious management failure within the organisation has caused a person's death.

Cotswold Geotechnical Holdings, based in Gloucestershire, is the first company to be charged with the criminal offence of corporate manslaughter. The charge is as a result of the death of an employee who

was killed whilst taking soil samples from a pit, which collapsed and crushed him.

The company director, Peter Eaton, is also charged with gross negligence manslaughter. If convicted, Mr Eaton, who is due before Magistrates in June (which is before we go to print), could face life imprisonment and the firm could receive an unlimited fine. Both the firm and Mr Eaton face health and safety charges.

# Employment...

## The right to legal representation at a disciplinary meeting

**A schoolteacher was suspended pending an investigation into an allegation of inappropriate conduct towards a pupil. He was informed of his right to be accompanied by a work colleague or union representative at a disciplinary meeting. A request for legal representation was turned down.**

The teacher refused to co-operate with the disciplinary procedure, claiming that it was unfair. The outcome was a dismissal on grounds of gross misconduct, against which an appeal was made with a further request for legal representation, which was again refused. In view of the nature of the allegation, the school was under a legal obligation to report the dismissal to the Secretary of State who was entitled to make a direction to add the teacher's details to the barred list, preventing him from carrying out

any further work, directly or indirectly, involving children.

The teacher sought judicial review in the High Court, claiming that the nature of the process entitled him to legal representation. The Court agreed and held that the serious nature of the allegations and the impact of being placed on the barred list permitted legal representation.

This case has clear ramifications for all employers who engage in services to children and vulnerable adults or who are under any

obligation to refer details of an employee considered as unsuitable for working with children and vulnerable adults; a decision that can be taken without any disciplinary hearing having taken place. It remains to be seen how this decision may impact on an Employment Tribunal considering the issue whether or not the procedure and therefore a dismissal in all the circumstances is fair, but it is likely that employers will have to allow for legal representation. However the right to legal representation is limited to these specific circumstances and this case does not give a general right.

**Legal Representation -  
R -v- Governors of X School.**



## TUPE - Service Provision Change will apply to professionals

**TUPE 2006 introduced the "service provision change" (SPC) which sought to make clear that contracting out and re-tendering of services was caught. This amendment sought to put an end to the arguments that TUPE didn't apply unless there was a transfer of assets. Initially an exemption for professional services was considered, but it was not part of the final regulations. Where an employee is assigned to a particular service, TUPE will transfer that employee if the service is moved to a different provider.**

There are certain conditions that need to be satisfied, including that the employee is properly 'assigned' to the service which transfers. This has always provided some scope for an employer to reassign employees that it would wish to keep, at the same time assigning staff that it would rather lose to the service to be transferred. There is nothing remarkable in this case other than, firstly, this is the first case to specifically apply to legal services where the client changed adviser only to find that the old team it had previously instructed also moved; and, secondly, because the Tribunal worked on the basis that if any employee spent at least 50% of their time on work for that particular client then they were properly considered to be assigned to it.

The case reinforces a point which we have previously made in that often a SPC arises as a result of client dissatisfaction with the service that they have received. Changing provider may not give the quick fix answer. There are two very easy steps for a client to take, the first is to require that a service provider does not assign any individual employee to the work and that the work is shared around. Clearly the disadvantage is that it may be difficult for a service provider to build up a suitable level of understanding of the client's organisation. The second approach would be to require service providers to give TUPE indemnities accepting liability for the consequences of any SPC. Many organisations already contracting with local and central government will be familiar with this type of arrangement which is already becoming commonplace.

**Royden -v- Barrett's.**

# Social Enterprise...

## Industrial and Provident Society Reform

HM Treasury has confirmed that it will be making some piecemeal reforms to Industrial and Provident Societies by way of statutory instrument. The most important of these will be to remove the present limit of £20,000 which any person can invest in the transferable shares of an industrial and provident society. For withdrawable (redeemable) shares, the limit will be increased in line with inflation.

It is expected to increase from £20,000 to £30,000. Societies will also be put on a par with companies in being able to decide what their accounting year end should be. Finally, dissolution of

solvent societies will in future require signatures from two thirds of members and not three quarters.

Whilst all three reforms are welcome, the long overdue major updating of industrial and provident society law and the

computerisation of the registry of mutual societies remains a serious obstacle in social enterprise development. (HM Treasury Proposals for a Legislative Reform Order for credit unions and industrial and provident societies in Great Britain: response to consultation April 2009.)

## Community Interest Companies - further consultation



The consultation reported in the last issue of Social Economy has now closed and a response from DBERR has been issued. There are no momentous changes proposed but three are worthy of note:

- Once the amendments are passed it will be possible to remove the provisions relating to alternate directors. This will simplify the articles of a CIC.
  - The provisions in respect of a casting vote at a meeting of directors will be aligned with that of the Companies Acts namely that the members of the company can decide whether to have a casting vote or not for the Chairman.
  - Finally, it will be possible to convert a CIC into an asset locked Industrial and Provident Society (IPS). This would give flexibility to those CICS who wish to raise investment from the public by converting to an IPS.
- The second consultation, which closes on 18 June, is arguably

more important since it goes to a major drawback of the CIC regulations, namely, the interest and dividend caps. Instead of leaving these to the market they are currently artificially limited to Bank of England base rate. Wrigleys will be submitting a submission in favour of the abolition of the current caps to the regulator. Hopefully, we will have as much success here as in the first consultation.

[www.cicregulator.gov.uk](http://www.cicregulator.gov.uk)



## Employee Ownership... Structuring employee ownership



A new guide to employee ownership has recently been written by Malcolm Lynch Solicitors' alumni Robert Postlethwaite (pictured left) for the Employee Ownership Association. "Structuring employee ownership" aims to assist both co-owned companies and those looking to transfer to co-owned status maximise the benefits of co-ownership.

The guide discusses the pros and cons of the different employee ownership models that are available. Broadly, there are three models: the company can be owned indirectly through one or more trusts, it can be owned directly through shares individually owned by employees, or it can be

owned through a combination of these approaches. The right ownership structure will depend on the particular circumstances and intentions of the company.

The numerous decisions to be made within each structure should be taken only after due consideration of the advantages and

disadvantages of various factors - these will include the practical and administrative consequences and the tax advantages and pitfalls of each approach.

For further advice on structuring employee ownership please contact Malcolm Lynch, Sue Greaves or Tom Wainman at Wrigleys.

Copies of this publication are free to download on the Employee Ownership Association's website - [www.employeeownership.co.uk](http://www.employeeownership.co.uk)

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If you require legal advice on charity and social economy law

Please contact Malcolm Lynch at Wrigleys Solicitors, 19 Cookridge Street, Leeds, LS2 3AG, tel: 0113 204 5724, or visit [www.wrigleys.co.uk](http://www.wrigleys.co.uk)