

DIRECTORY OF SOCIAL CHANGE

INFORMATION AND TRAINING FOR THE VOLUNTARY SECTOR

DSC Response to Charity Commission Consultation

Annual return for 2015 – information collected from charities

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About the Directory of Social Change

The Directory of Social Change (DSC) has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society.

Through our publications, courses and conferences, we come in contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers and are constantly struggling to maintain and improve the services they provide.

We are not a membership body. Our public commentary and the policy positions we take are based on clear principles, and are informed by the contact we have with these organisations. We also undertake campaigns on issues that affect them or which evolve out of our research.

We view our role as that of a 'concerned citizen', acting as a champion on behalf of the voluntary sector in its widest sense. We ask critical questions, challenge the prevailing view, and try to promote debate on issues we consider to be important.

Through our policy work we have devised a number of policy principles upon which we base our actions, judgements and recommendations. One of our policy principles calls for responsible regulation.

DSC's Principle of Responsible Regulation

DSC believes that some regulation is necessary to safeguard and maintain the interests of the general public, the beneficiary, and of the organisations and individuals being regulated. However, it should have a demonstrable benefit, and should aim to empower and strengthen voluntary activity rather than control it unnecessarily.

Our understanding of what constitutes regulation stems from the impact it has on the organisations and individuals concerned, rather than any technical definition.

a) Regulation should be proportionate

Regulation must strike a balance between perceived risk and intended benefit. It should recognise the diversity of voluntary sector activity and be developed and applied in a proportionate way.

b) Regulation should be appropriate

Regulation must be informed by the characteristics, capacity, and needs of the organisations and individuals that are being regulated. Insofar as is possible it should be focussed, rather than acting as a blunt instrument that has unintended effects.

c) Regulation should be enabling

Regulation should seek to empower rather than control voluntary activity. The reasons for the regulation and the regulation itself must be properly understood by those institutions which are applying it. It should be accessible and intelligible to those being regulated. It should seek as far as possible to encourage self-regulation rather than focus simply on enforcement.

Responses to Consultation Questions

- 1. Do you agree with the proposal to introduce a question into the annual return to ask how much of a charity's total expenditure has been on campaigning activities? YES/NO – If you disagree give reasons why.**

We disagree with this proposal. We do not feel it is workable nor that the case has been made for including this cost separately from other costs. To do so would be administratively difficult. More importantly it also has the effect of casting doubt on charity campaigning – an entirely legitimate charitable activity used in furtherance of a charity's purposes.

Transparency and accountability in the most general sense are 'good' properties or values for any charitable organisation to embody, but we always ought to consider the full context in which particular notions or proposals are advanced.

The Public Administration Select Committee has recommended that charities declare campaigning costs publicly. Based on the evidence presented by the Committee we are not convinced by either their conclusion or how they arrived at it.

We disagree with charities having to include their total campaigning expenditure in their Annual Return (AR) for a number of reasons:

- We can see no compelling reason why this one charitable activity is singled out above others. Campaigning is a legitimate charitable activity used in pursuit of an organisation's charitable purposes. This is clearly spelled out in Charity Commission guidance that is based on the law. We see isolating campaigning costs for special treatment as part of a broader attack on charity independence which is closely bound-up with the right to campaign.
- Difficulty in calculating and lack of an agreed definition. What counts as campaigning? How does it fit with advocacy, media work, lobbying, promotion of services, policy development, and research which influences public attitudes or perceptions? This would be a headache for charities to negotiate – especially smaller ones. Without a clear understanding of what we want this question to tell us, any comparative data is meaningless.
- This problem of definition is not isolated to smaller charities. Charities which have to submit returns to the Electoral Commission under the Lobbying Act provisions will be faced with accounting using two different definitions of campaigning and overlapping but non-contiguous accounting periods. This represents a very real and substantial barrier to campaigning.
- Campaigning by its very nature is in the public eye. It is one of the most visible and public activities a charity can engage in. It aims to recruit support, change opinions, and raise awareness. Therefore the rationale behind the introduction of this new

requirement is weakened by the fact that the public already know charities campaign. Those charities which do will want to explain how and what they do very publicly. Indeed the public think it is right they do so and they want them to continue to do it.¹ Charities should not have to list a separate figure in their annual return.

- Given that the public know about charity campaigns, support charity campaigns and willingly fund charity campaigns - why have this measure at all? We see the rationale for this measure not driven by popular demand or regulatory necessity but by political pressure. Certain politicians have a narrow and incorrect view that charities should not campaign or should campaign much less than they do. The Commission should not pander to these minority views, rather it should bolster and uphold charities' right to speak up and speak out.

- 2. Do you agree with the proposal to introduce a question to the annual return to ask how much of a charity's income was received from:**
 - a. public service delivery**
 - b. private donations?**

We agree in principle with providing this information subject to further clarity on point (a) income received from public service delivery.

Data about the extent to which charities operate services on behalf of the state is clearly in the public interest, and should be better understood by policymakers. It goes to the core of debates about the relationship between civil society and the state, and their shifting roles in recent decades. As information which the trustees of a charity will already collect we do not see adding this to the Annual Return to be an onerous regulatory burden.

However, there are knotty definitional problems which need to be resolved for this question to be meaningful. Any charitable service could be understood as a 'public service', as charities by nature must benefit the public. Greater clarity is needed if this question is to be read as 'public services delivered on behalf of the state'.

Further, a distinction ought to be made between different types of public service delivery funding. This heading is too broad to be useful and even potentially misleading.

A grant from a local authority or central government to a charity ought to be treated as private income like any other grant. It is, legally and patently different from a contract or payment-by-results arrangement. Grants have the potential to empower charities to carry out the work that they identify as important and to address the need as they see it. A government grant represents government's endorsement of this work – it does not mean the charity is an extension of government policy and the grant should be treated no differently from any other donation. So we see no reason why a charity should have to list this information separately. This obligation, if it exists at all, should lie with the funder and not the charity - particularly given the Government's commitment to open data.

¹ 32% of the public think charities should lobby government to change law or policy – 24% already think this is something charities should do. 47% Feel that raising awareness of important issues in society was important – IPSOS MORI/NPC (March 2014)

On the other hand we see no problem in listing a charity's funding from government contracts. Contracts, in contrast with grants, represent a qualitatively different arrangement between government and charities which bind a charity more closely to government and its agenda for social services and change. We believe that a charity's supporters and the general public have a right to access this information clearly and have no objection to it being included here.

It is possible that, following an explanation of what is meant by 'public services delivery', two different options could be selected – one to describe grant income and one to describe contract income. But this might necessitate removing grant income from the larger category of 'private income'.

3. If we did introduce the questions set out above is it feasible for charities to provide this information for the annual return for 2015, or should we wait to introduce the question in the annual return for 2016?

We would recommend waiting until 2016, primarily for the benefit of small charities which might have difficulty putting the systems in place in time for 2015.

4. Do you agree with the proposal to ask whether a charity has a written policy on remuneration of executive staff?

This proposal is problematic for a number of reasons. We do not see the purpose of it and therefore do not agree with its inclusion.

Taking this information in isolation could lend credibility to the implication that paying staff is not an effective use of charitable resources. We disagree with this proposal for a number of reasons:

- Why ask solely about an executive pay policy? This is particularly the case for charities in the lower income brackets, many of whom will not have a chief executive or equivalent. Yet if such a charity responds that they do not have a policy this could give the false impression that they are negligent, careless or untrustworthy from a cursory public view. Not having a policy is not an indication of a lack of good governance – there may simply be no need for one. While we are not in favour of including this question, a Yes/No/Not applicable choice would be more sensible if this proposal were to go ahead anyway.
- If having a question on remuneration at all, why not ask if a charity has a remuneration policy which applies to all staff instead? This strikes us as more logical and certainly more useful. This is the approach that DSC follows in our own annual report and accounts.
- We are also concerned that this question has been motivated by sensationalist and publicity seeking claims by politicians and newspapers rather than fulfilling and upholding the Commission's statutory objectives. This question will contribute little to public understanding about the real issues. Whether or not a charity pays staff or has a policy on it says nothing about how effective the charity is or whether it gets the job

done well. This is crucial information in looking at what a charity achieves overall, not just what it may pay a senior member of staff.

5. Do you agree with the proposal to introduce a question into the annual return for 2015 to ask if a charity has carried out a review of its financial controls during the reporting year?

This proposal has some merit for some of the charities in the sample but it ought to be accompanied by proper guidance in order for it to be useful or effective.

Introducing this question does have some benefit in that it would prompt trustees and operational staff to consider whether their current controls were adequate and still appropriate. This could potentially increase charity compliance and boost public confidence in the sector as a whole.

However, should this question be included it is important that it is tied closely to the guidance in CC8. Charities should be signposted in the direction of CC8 when asked this question. This is key to ensuring that small charities feel confident in completing a review.

6. Do you agree with the proposal to ask charities with incomes of between £10,000 and £500,000 to provide some key financial information through the annual return?

This is a difficult question to answer yes or no. There is an obvious benefit not just to the Commission but to the wider charitable sector and the public in having more detailed data available and accessible. Making this data easier to collect and analyse could allow the sector to better understand beneficiary need and the extent of charitable activity in different areas at the macro-level. However, it is questionable whether this justifies the extra burden for small organisations.

Collecting further financial information in an electronic format could enable the Commission to map and monitor the sector more effectively, by analysing trends, spotting potential problem areas, and developing new policies accordingly.

On the other hand, extending this requirement to such a small size of organisation (by income) could also create an unjustified and disproportionate burden on very small charities.

If this proposal is to go ahead we believe the proposed threshold for collecting information is far too low and it should not be extended to smaller charities. The benefit would not be outweighed by the extra work, extra red tape and possible additional expense incurred. We make this point in the context of the Commission noting its plans to increase the amount of information requested in coming years, thereby increasing this burden further. We believe that this goes beyond proportionate regulation.

We therefore recommend not collecting further information from charities with incomes between £10,000 and £299,999. The Commission should carefully monitor compliance as well as the utility of further information collected and any problems encountered by charities

with incomes between £300,000 and £500,000 before returning to consider asking smaller charities for this information at a later date.