

DSC consultation response

Charity Commission Annual Return 2018

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1. Background

In England and Wales, all charities above £10,000 income and all Charitable Incorporated Organisations (CIOs) must complete an Annual Return (AR), which includes key data that helps populate the online register of charities.

The Charity Commission is moving to a new system for 2018 that will be paired with a new online Update Charity Detail (UCD) function, to allow continual updating of basic charity information – i.e. trustee details – for all charities. The Commission is consulting on these changes and specific questions in the AR until 24 November 2017.

In theory, some benefits of the new system will be:

- **More accurate data**, by allowing charities to update some information more regularly than annually (for example new or retired trustees and their details).
- **More proportionate regulation**, by asking funnelling questions on key topics of regulatory risk. For example, not all charities will have to answer all questions; answering ‘yes’ to certain priority questions will prompt more detailed ones.
- **Better insight into risk areas**, by asking for more data on risk areas, the Commission hopes to be better able to more effectively target its enforcement and compliance.

Many of the proposals seem reasonable, but some may be unworkable or pose a disproportionate regulatory burden to the charities affected. Some require further clarity around definitions to ease the process for those completing the AR and to ensure accurate data is entered, to return robust results that the Commission can use. Further, some proposals don’t seem to provide sufficient evidence of need to justify collecting the data.

A simpler and more tailored AR has the potential to be a great improvement for charities and the public. The Commission states that the changes ‘are intended to reduce the amount of information that smaller charities have to supply every year and target more detailed questions only where relevant to each charity’.

We hope this will be the case. The wider push to move towards gathering and providing information mainly online has clear advantages, but also needs to be done with care and appropriate support for trustees, particularly of smaller charities.

More information on the Annual Return can be found on the www.gov.uk website, at:

<https://www.gov.uk/government/consultations/annual-return-for-2018-information-collected-from-charities>

2. General recommendations

DSC's responses to the specific consultation questions follow under Section 3 below, but we make the following general points for the Commission to consider in the new AR and online UCD system.

In order to make the new system a success, the Charity Commission should:

- Have a longer-term, planned use for any additional data it requests (rather than asking for the sake of it, or because there may be short-term media interest, for example).
- Carefully consider whether the phrasing of questions, or the ways they may potentially be (incorrectly) interpreted and answered is likely to return robust and useable data.
- Ensure any questions asked are proportionate, and do not add an unjustifiable regulatory burden (or have little tangible benefit relative to the burden imposed).
- Seek data in formats which is already compiled elsewhere (for example in charity accounts). Avoid questions which require extra computation or 'legwork'.
- Clearly define key terms (such as 'professional fundraising') not just in the AR, but wherever subsequent data is publicly displayed (for example, if it appears on the online register of charities). This helps to clarify and contextualise information.
- Ensure accessible help for respondents, especially those which might have limited online access or 'online literacy' – for example: helpline, web chat, written guidance. Quick links to relevant definitions within the body of the online form are useful.
- Provide a short-term additional helpline specifically for questions on the AR18 and new UCD system immediately after its release with an accessible, staffed number.
- Collect feedback on the new system, including tracking the time it takes charities to fill out the new AR, and benchmarking this with data for the previous AR. This should be done using a large and diverse sample.
- Communicate the importance to charities of supplying accurate information in a timely manner, whilst enabling and supporting charities to do so.
- Clearly explain the reasons for collecting the data, the robustness of the Commission's research methodology and how findings might be used in the future. Also, any relevant data protection issues and to whom research findings will be available (for example, aggregated analysis, or in specific fields on the register).

3. Responses to individual consultation questions

The Commission is proposing changing and adding questions for the AR18 under the following themes:

Section A – Income

Section B – Expenditure

Section C – Managing charity assets

Section D – Safeguarding

3.1 Section A – Income

Fundraising - proposed questions:

- Question A.2 – Does the charity work with a professional fundraiser? – Yes/No
- Question A.2.1 – Does the charity have a signed contract with the professional fundraiser? – Yes/No

The Commission wants to know if charities have contracts with professional fundraisers, not just commercial participators (as at present). This seems reasonable, given recent scandals, and could prompt charities to check and review any contracts. However, the AR would need to provide clear descriptions about what is meant by ‘professional fundraisers’ in order to receive accurate data. For example, does this refer to fundraisers employed internally by the charity? Or just third parties who are contracted to do so? Clear instructions are needed.

The Commission should ensure also that there is no duplication of data that the Fundraising Regulator (FR) already collects. Data sharing arrangements with the FR could help to prevent such duplication.

Grants and contracts from government - proposed questions:

- Question B.1 – How many contracts did the charity receive from central or local government?
- Question C.1 – How many grants did the charity receive from central and local government?

The Commission wants to know the number and total value of government grants and contracts a charity receives. This data would be very useful to have in the public domain. However, gathering it separately or in a different way from charity accounts might be difficult (for example, one large charity with lots of local authority contracts) and could pose a burden.

It should be made clear to users that they can use existing information from their charities’ accounts – ideally in the same format (e.g. via info boxes, prompts before users start filling

out the AR). Depending on their background, users might also use different definitions of central or local government. Clear guidance on how the Commission defines these terms will improve the quality of information provided. For example, if a central or local government grant scheme is run by a local Community Foundation, is that government funding? The respondent may not know the answer or be able to find it out.

This will be a sensitive topic in the sector as charities in receipt of government funding may be wary of being attacked by the press or certain politicians as ‘fake charities’ etc if in receipt of government funding. Presentation of the data needs to reflect the legitimacy of this type of income.

The Commission should explain why the question is asked and for what purpose the data is being collected. For example, if the Commission tries to identify risks of over-reliance on one source of income, then simply calculating or presenting information about government grants and contracts alone does not provide a sufficient picture.

Gift Aid – proposed questions:

- Question D – During the financial period for this Annual Return how much Gift Aid did the charity claim?

The Commission wants to know whether the charity is registered for Gift Aid (as at present), and how much it claimed. Income from Gift Aid would already need to be represented in the charity’s accounts. However, this could legitimately differ from the amount of Gift Aid claimed, in any given year, because of variable filing periods. Also, HMRC may have refused some of a charity’s Gift Aid claims for different reasons.

The rationale given for this question is vague and the case for apparently duplicating what HMRC already requires seems weak. Because of the inconsistencies, reported data on claimed Gift Aid, collected through the AR, might also not be very meaningful. For example, respondents could easily mistakenly enter Gift Aid income rather than the amount claimed. There could also be confusion with the Gift Aid Small Donation Scheme.

Overseas income – proposed questions:

- Question E – During the financial period for this annual return, did the charity receive income from outside of the UK? - Yes/No
- Question E.1 – Select countries the charity received income from during the financial period for this annual return or select ‘unknown/don’t know – a drop down list will be shown
- Question E.2 – What is the value of income by country? For each country specify the source and amount of income from the options:
 - a) Overseas Governments or quasi government bodies
 - b) Overseas Charities, NGOs or NPOs
 - c) Other overseas institutions
 - d) Individual donors resident overseas
 - e) Unknown/don't know

The Commission already asks for information on overseas expenditure, but now wants information about income too. It's unclear why this information is needed – possibly to better target risk of terrorism and fraud, or potential inappropriate influence on UK charities by foreign governments or wealthy donors?

Providing accurate answers to these questions could be overly burdensome for many charities, whilst providing useable intelligence for the Commission in only a small number of cases. The suggested categories could also prove to be insufficient. Information on overseas donors, for example, may not be in an accessible format, especially if it comes from many donors making small donations.

Further, there are primary trading charities that do not have a physical presence overseas, but receive income from selling products outside the UK. Tracking down and specifying this in detail for purposes of the AR could be impossible or simply too burdensome, leading to incomplete data (i.e. many 'don't know' responses).

3.2 Section B - Expenditure

Salaries – proposed questions:

- Question F – During the financial period for this Annual Return, did any of your charity's staff receive a salary of £60,000 or more? Yes/No
- Question F.1 – Enter the number of staff for each of the following salary bands - a drop down list will be shown:
 - £60,000 to £70,000
 - £70,001 to £80,000
 - £80,001 to £90,000
 - £90,001 to £100,000
 - £100,001 to £110,000
 - £110,001 to £120,000
 - £120,001 to £130,000
 - £130,001 to £140,000
 - £140,001 to £150,000
 - Over £150,001
- Question F.2 – How much is the CEO paid?

The Commission wants more information about senior salaries for purposes of 'transparency' and 'public trust'. However, any salary above £60k already must be noted in the accounts of charities which apply accruals accounting under SORP. The Commission proposes to extend the requirement to all charities required to submit the AR.

These questions would effectively gather additional data about any £60k+ salaries paid in the £10k - £250k charity income bracket – i.e. below the threshold for accruals accounts and above the threshold for submitting the AR. This is a large sample, but it's unlikely that many charities within it would have anyone paid above the £60k level. Why then is it needed?

Payment to trustees – proposed questions:

- Question G – During the financial period for this annual return, were any of the trustees paid:
 - a) for being a trustee
 - b) for providing professional advice e.g. accountancy or legal advice
 - c) in receipt of other benefits e.g. renting property from the charity below market value?
- Question G1 – During the financial period for this annual return, were any employees formerly trustees of the charity?

The Commission wants more information about circumstances where trustees were paid, presumably because it might indicate potential conflicts of interest, inappropriate payments or poor financial controls. DSC would support collecting this information, mainly because it would be useful data to have about the sector and to inform a recurring debate about charity governance. However, there would need to be clear definitions about what payment was for and a way to elaborate on the trustee's circumstances.

Further, some charities have in their objects the power to pay trustees, or have obtained the Commission's authorisation to do so. They need to have the option to make this clear so that data is not misinterpreted, rather than simply ticking a)-c), especially if this data is going to be presented in disaggregated form (for example, on the charity's register entry).

Overseas expenditure – proposed questions:

- Question H.3 – When spending money outside England and Wales, did your charity transfer money outside of the regulated banking system? Yes/No
- Question H.4 – What methods to transfer money did the charity use and what was the value? – a drop down list will be shown
 - a) Cash courier
 - b) Other charities or NGOs/NPOs
 - c) Money Service Business (MSB)
 - d) Informal Money Transfer Systems
 - e) Online payment methods e.g. PayPal
 - f) Other
- Question H.5 – Does the charity have monitoring controls in place to monitor overseas expenditure? Yes/No
- Question H.6 – Are the trustees satisfied that the charity's risk management policy and procedures adequately address the risks to the charity arising from its activities and/or where it operates? Yes/No

The Commission already asks for information about overseas expenditure, but the AR 2018 would seek more information via funnelling questions to identify potential problem countries and potentially risky mechanisms for transferring money (i.e. not using recognised banking systems).

The rationale for asking this question is unclear. Is the Commission interested in finding out whether ‘money is not spent on the right purpose’ or is the intent about the ‘transaction’ only as potential evidence of risky practice? Is it about how money is spent once it left the UK or about the transaction from the UK to other countries? Is it also about how money is spent or transferred within the UK?

The Commission also asks about monitoring and control mechanisms for overseas expenditure. This might be a good prompt for charities to review their existing policies. Clear definitions of these mechanisms should be provided for users. Trustees can also sign off an AR in good faith not being aware that the mechanism in place did not work at the time. It is unclear how such a case would be treated by the Commission.

Also, would transfers to Scotland, or Northern Ireland, for example, really be a problem to monitor or potential evidence of doing something wrong?

3.3 Section C – Managing charity assets

Land and buildings/rate relief – proposed question:

- Question I – Does the charity get rate relief on the premises?

The Commission wants to ask whether a charity receives rate relief. This could be useful information to have in the public domain from a policy perspective, but the Commission’s rationale seems to be more about indicating evidence of charity mismanagement which seems vague and lacking justification. This issue, and any subsequent criminal/regulatory action, would seem to be better dealt with in the first instance by local authorities.

There are many reasons why a simple yes/no answer here would be unlikely to return very meaningful data. For example, the council could simply have got rid of discretionary rate relief in the area – as is increasingly occurring. Or, the charity for some reason did not claim their entitlement. Or, the charity might not be entitled to claim rate relief at all. All three answers would yield a ‘no’ result for completely different reasons.

Trading subsidiaries – proposed questions:

- Question J – How many trustees are also Directors of the subsidiary?

The Commission wants to ask whether any charity trading subsidiaries share directors with the charity itself. Presumably this is to flag up (and address) potential conflicts of interest between trustees who wear two hats – as charity trustees and the subsidiary’s directors. We think this is useful data to collect, and could be done reasonably easily.

Under company law, directors must act in the best interests of their company, and not just be beholden to the interests of a parent organisation. If there is too much overlap between trustees and directors of the subsidiary, this can inhibit the ability of the directors to make independent judgments.

3.4 Section D – Safeguarding

Working with vulnerable beneficiaries and DBS checks – proposed questions:

- Question K – Do any trustees, staff or volunteers work directly with vulnerable beneficiaries? Yes/No
- Question K.1 – Have DBS checks been carried out on these individuals?

The Commission wants to know if the charity works with vulnerable beneficiaries (as at present) and if so whether it applies Disclosure and Barring Service (DBS) checks to trustees, staff or volunteers who work directly with them. At face value, this seems like reasonable information to collect, and useful for targeting risk areas. It might also prompt trustees to ask themselves whether beneficiaries are ‘vulnerable’ under the relevant regulations and whether DBS checks are needed if not already in place. For example, this issue cropped up in work the Commission did with recently registered military charities.

However, drawing useful conclusions from the data provided might not be straightforward. Users would require good guidance on how the Commission defines ‘vulnerable’. Further, safeguarding or DBS checks are not necessarily required in every case where trustees, staff or volunteers work with vulnerable beneficiaries. For example, when a volunteer or part-time individual working or in contact with vulnerable individuals does so under the supervision of someone who has undertaken done safeguarding or DBS checks, then they don’t need to be subject to those checks themselves.

In this example, the answer to Question K might be ‘yes’ and the answer to Question K1 ‘no’, without necessarily indicating any safeguarding failure on the part of the charity. A further question or statement would be needed to clarify that part-time employees or volunteers always work under proper supervision of those who have undertaken appropriate training and DBS checks.

4. About DSC

The Directory of Social Change 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.

5. Responsible Regulation

DSC believes that charities’ activity should be regulated responsibly. 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 charities rather than control them unnecessarily.

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.