



Menzies LLP raises £1,500 in support of local charity

We were pleased to help Treloars school by donating the proceeds of £1,500 raised from the recent Menzies Blackwater Valley office annual charity quiz.

Held at Pine Ridge Golf Club in Camberley, the quiz was attended by 35 teams of local businesses with Wheelers Solicitors taking home the Menzies trophy after a fiercely contested competition.

Sophie Davies, Treloars Trust and Corporate Fundraising Manager said "We were delighted to have the opportunity to introduce Treloars work to a wide range of local companies on the annual Menzies quiz night and benefit from the huge generosity of those present.

Each year Treloars provide first class education, therapy, medical support, and independence training for around 250 children and young people from all over the UK with physical disabilities in a caring and supportive environment. Our young people are among the most disadvantaged and vulnerable in society today. The support of Menzies and its associates is a much welcomed boost to our fundraising efforts to ensure that we provide the right services and care to help our students reach their full potential and live their lives to the full".

One of the highlights of the evening was when teams had to dress up as either a bride or groom from a variety of items that they were given. Points were awarded for every item they managed to make and bonus points added for the best five chosen by the judges!

Charity fraud – a growing problem

Even in good times, fraud is a problem for charities. Sadly, the most well intentioned organisations are targets for unscrupulous fraudsters and charities are particularly vulnerable to fraud. As the effects of the current economic slowdown bites, fraud has become a growing problem for charities.

The National Fraud Authority estimates that charities lose an estimated £1.3 billion each year as a result of fraudulent activity. Trustees have a duty of care to take steps to protect charity assets from fraud. The Fraud Advisory Panel (FAP) has found that 60% of charities do not have specific anti fraud measures in place in spite of trustees recognising that fraud was a major financial risk. Furthermore,

the FAP found that charity trustees were largely unaware of their responsibility to report fraud to the Charity Commissioners.

Recent government cuts in the funding of the Charity Commission will help the fraudsters. With only 280 staff remaining to regulate the 300,000 charities registered in the UK, there will be relatively little assistance on offer from the regulator. Consequently, the onus on the proper stewardship of charity assets falls heavily on the beleaguered trustee.

The steps required to protect an organisation against fraud depend upon the nature of the charity and the activities which it undertakes. The biggest risk by far is posed by employees, either working alone or in collusion with others. The incidence of risk increases with the seniority of staff, and there have been numerous cases where senior employees and trustees have been found guilty of fraud. Reducing the potential for

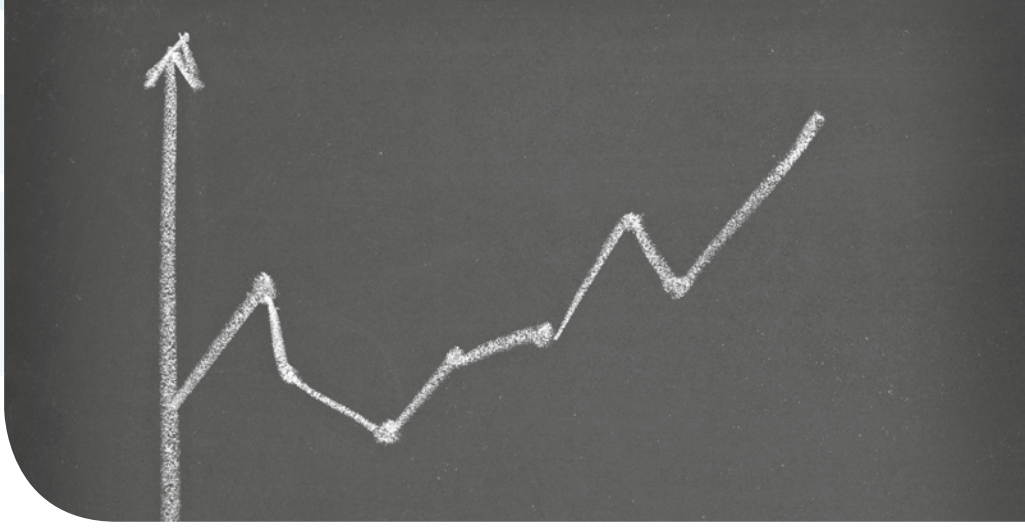
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fraud starts with the recruitment process and this should be rigorous enough to identify potential problem candidates from the outset.

Frauds range from the simple theft of cash donations to the sophisticated diversion of electronically gifted funds. Charity identity fraud is also on the increase and trustees need to be alert to this and apply safeguards to protect potential misuse of the charity name.

The misappropriation of a charity's assets can be relatively easily achieved if controls are lax or non-existent. All trustees, regardless of the size of the charity should enquire into the financial and systems controls that exist, such as who authorises expenditure and who are the cheque signatories. If a fraud is perpetrated, it is essential that the trustees are able to demonstrate that adequate safeguards and controls were in place. The determined fraudster can be hard to stop, but there is no excuse for creating an environment in which the opportunities for fraud readily exist. Engendering a good ethical culture within the organisation can help to reduce the prevalence of fraud.

The consequences for those charities hit by fraud can be severe. Apart from the loss of assets, fraud can lead to the cancellation of charitable support to worthy causes, damaged reputations and staff redundancies. If you believe that your organisation's systems offer inadequate protection against fraud, or if you would like further advice on the steps that can be taken to put the requisite anti-fraud measures in place, please contact **Peter Earle** on **01372 226300**

Recent Charity and Not for Profit client gains include the following:

- **Fulbrook School**
Academy School
- **Hope and Evolution Foundation**
Supporting education in the 3rd World
- **Tongole Foundation**
Supporting development and relief work in Malawi

Academy schools – the role of the responsible officer

Schools under Local Authority control have always had a requirement to maintain robust internal financial controls. Until recently, under FMSIS, it was the school governors' responsibility to carry out a programme of checks to make sure that those controls were operating satisfactorily. Satisfactory results from these checks enabled the governors to sign off the internal control statement each year.

Conversion to academy status widens and strengthens this with the requirement to appoint a Responsible Officer (RO) to take on the specific responsibility for overseeing the financial management arrangements on behalf of the Governing Body as a whole.

The RO should be a governor (but not the chairman) or an appropriately qualified and experienced individual not on the staff of the academy. This need not be a recognised qualification but the individual must be able to demonstrate that they understand the responsibilities of this pivotal role within the finance function. Just as important is that the appointed individual should have sufficient time available to carry out the checks and prepare the formal report.

The main duties of the RO as set out in the Department of Further Education's Academies Financial handbook, are to provide the Governing Body with ongoing independent assurance that:

- The financial responsibilities of the Governing Body are being properly discharged
- Resources are being managed in an efficient, economical and effective manner
- Sound systems of internal financial control are being maintained

- Financial considerations are fully taken into account in reaching decisions

In order to provide the Governing Body with this assurance, the RO is required to carry out a programme of checks on the financial controls and prepare a written report on his findings for the Governing Body at least once each quarter. The programme of work should also cover any separate trading companies or school funds held.

If the programme of work is properly planned and discussed with the Governing Body and external auditors in advance, the auditors may be able to rely on the work of the RO for part of their audit and assurance work. This would, of course, have a cost benefit to the academy.

If it is not possible to find an appropriately qualified individual from within the Governing Body or finding the time to carry out the programme of work is going to be a problem, it is possible for the Governing Body to engage a firm of auditors to assist the RO with the required work.

We can provide a support programme for RO to ensure that they are fulfilling their role to meet the requirements of the Governing Body. This can include the following:

- A review of the financial systems in place
- Tailoring a programme of work depending upon the financial systems
- Assisting with the audit checks required
- Compiling the quarterly report to the Governors

If you would like to discuss this further, please contact **Stephanie Wright** on **01252 894918**

Legal structures for social enterprises

There are currently seven different structures through which social enterprises commonly operate, which presents a somewhat daunting choice. Below is a brief outline of the choices available in England and Wales. Please note that in some cases the law is different in Scotland and Northern Ireland.

Unincorporated association

This has no formal structure. No one in particular owns the entity and it will need to create its own rules. As there is no legal status, the ownership of property or completion of contracts can be complicated. The association can be a charity if it meets Charity Commission criteria.

Trusts

Holding assets in a trust enables the legal ownership of the asset to be separated from other economic interest or use. Trustees are appointed to manage assets in the interests of defined beneficiaries. The trust itself has no legal persona and the trustees act personally on its behalf. Trustees are not normally able to benefit from the trust. The trust is able to hold assets for community benefit. A trust can become a charity if its activities qualify for charitable status.

Limited company (other than community interest company)

Directors manage the company for a specific charitable purpose. Member's liability is limited to the amount of unpaid share capital or amount they guarantee. Directors can be remunerated by the company for services provided. Where there is share capital, dividends can be paid. Assets are held in accordance with the company's rules and can be held for community benefit. If the activities of the company qualify it can become a registered charity.

Community Interest Company (CIC)

The rules of this specific form of limited company will require regulation to ensure that the assets are held primarily for community benefit, although those running the company may also benefit. Directors can be remunerated and limited dividends may

be paid to private investors. The CIC cannot become a charity. However, on ceasing to be a CIC, charitable status is available.

Industrial and Providence Society (IPS) (co-operative)

An IPS is designed for co-operatives that serve members interests by trading with them or by supplying them with goods or services. Elected representatives manage the entity on behalf of the members. There is normally one vote per member. Member's liability is limited to the amount of unpaid shares. Members would normally benefit by trading with the society and not by earnings from it. Assets can be held on behalf of the members and the community as defined within the rules of the society. An IPS (co-operative) is not eligible for charitable status.

Industrial and providence society (community benefit society)

This entity's primary benefit must be to the community other than its own members, and must have special reasons for not being a company. New legislation provides options for an IPS to hold assets on behalf of the community. Member's liabilities are limited to the amount of unpaid shares. The IPS can benefit those who run or own it. If the activities of the IPS qualify it can become a registered charity.

Charitable incorporated organisation

A corporate structure similar to a company and specifically designed for charities, with bespoke terms e.g. charity trustees instead of directors. Members either have no liability or limited liability. The organisation can hold assets. Members and trustees are not normally able to benefit but could do so if the Charity Commission and constitution allow. The entity needs to meet charitable qualifying status for it to be formed.

Other entities

Social enterprise activities may also be conducted through Partnerships and Limited Liability Partnerships, although these are probably not optimum structures.

For more help in indentifying which is the most suitable structure for your activity please contact **Mike Dawe** on **01489 566705**

Charity tribunal decision on public benefit requirements for independent schools

The long awaited Charity Tribunal decision on the public benefit requirement for charitable independent schools was finally published on 14 October 2011.

Readers will recall that the Independent Schools Council had taken this case to the Charities Tribunal as they were concerned by the Charity Commission's approach to public benefit in relation to independent schools. There was significant concern that the approach of the commission was unduly restrictive, taking away the responsibility of trustees to decide how charities should be run. It also placed an almost total emphasis on the granting of bursaries, particularly means tested full remission of fees, and did not take into account other ways of improving access.

The decision of the tribunal is finely balanced and is allowing all parties to claim at least partial victory in this case. The tribunal has confirmed that:

- All charities, including independent schools, need to provide a public benefit as defined including providing access for those who could not otherwise afford to take advantage of their benefits. To this extent, this has confirmed the Charity Commission's view.
- However, the tribunal has ruled that it is the responsibility of the school governors as charity trustees to decide how these benefits will be provided rather than that of the Charity Commission.
- Benefits do not necessarily need to be provided wholly or in part by the provision of means tested bursaries. The decision taken will depend very much on the circumstances of the charity concerned. Partial bursaries, or discounts because of changed circumstances, in particular have been endorsed by the Charity Tribunal. Other ways for instance would include provision of facilities or teaching assistance to the state sector.

There is, therefore, no fixed amount that schools need to provide by way of bursaries so governors do need to consider how they provide a public benefit given their school's circumstances. Although specifically aimed at independent schools, this decision has implications for all fee-charging charities.

If you require further advice on the impact of this long awaited decision, please call **Peter Earle** on **01372 226300**



Are you operating overseas?

If you operate overseas or partner with an overseas organisation there are very important changes in the way in which you need to monitor how funds you send overseas are being spent.

Obviously, the further away the expenditure is being incurred the harder it is for trustees to verify that it is being properly spent. In many overseas jurisdictions, particularly in the developing world, the legal and financial framework to control charitable funds to prevent fraud or, in extreme cases, diversion of funds to terrorism or other criminal activities is less developed. For these reasons, regulators are placing increased emphasis on proper control over charitable expenditure overseas.

Under the Finance Act 2010 there is now a requirement to put in place such steps as HM Revenue & Customs consider adequate to ensure that funds sent overseas are used for proper charitable purposes as otherwise tax reliefs may be lost. In other words, you will potentially need to convince HMRC that the steps you take are sufficient and it is not just down to the trustees to decide.

At the same time, the Charity Commission has published a report on a UK charity (Crescent Relief, London) where there was an alleged misuse of funds. Although the trustees were cleared, the Charity

Commission was concerned that there had been insufficient control of overseas expenditure and has set out some ground rules regarding what steps they would expect to see in place for monies being sent overseas.

Why is this important?

It is a requirement of charity law that trustees have a duty to protect charitable assets and monitor the use of charitable funds. This includes overseas monies as well as money spent in the UK. If sufficient steps are not taken, and it later transpires that monies have been lost through fraud or other misuse, there could be serious implications.

It is also very important to avoid the loss of tax relief. Broadly, UK registered charities are exempt from tax on almost all sources of income and are also eligible for Gift Aid recoveries on donations from individual UK taxpayers. This, however, depends on money being spent for charitable purposes, and tax law states that money sent overseas is only charitable if there is a proper system for monitoring that it is properly spent. If not, the charity may need to pay tax on its investment income or refund Gift Aid tax recoveries.

What steps should charities take?

The steps that trustees need to take depends on the amounts involved, both in absolute terms and as a proportion of total

expenditure. It also depends whether this is a one-off payment or an ongoing commitment and also the relationship with the partner organisation operating overseas, if this is how you are choosing to operate. It is no longer sufficient just to rely on the relationship and you must have a system for properly authorising and monitoring expenditure.

Depending on the size of the project and the relationship between the UK charity and the overseas partner there will be varying degrees of assurance required. For a relatively small amount paid to an overseas partner with which the UK trustees are already familiar a simple letter on the headed notepaper of the overseas body confirming receipt of the monies and how these have been spent will be sufficient. For larger projects the UK charity may require a proper project plan, regular reports and quotations for the expenditure being incurred. UK charities may decide that they need information regarding the internal governance of the overseas partner to ensure that funds are properly used.

For the very largest projects, proper detailed and legally binding assurances from the recipient body regarding the use of the expenditure may be required. This will require local legal advice to make certain that any agreement entered into are legally enforceable and that monies could be clawed back if necessary.

Detailed guidance regarding the HMRC views on overseas expenditure can be found at www.hmrc.gov.uk/charities/guidance-notes/annex2/annex_ii

Details of the Charity Commission review of Crescent Relief (London) can be found at www.charitycommission.gov.uk/alla_regulatory_activity/compliance_reports

If you require further guidance in this complex area, **Richard Snelling** would be pleased to discuss this with you on **01784 497126**

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