

**Winner**2017/18 Charity Finance  
Audit Survey

Overall service

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# Charity Workshop

## Editorial

Welcome to Charity Workshop, our newsletter that keeps charities up to date with the latest key topics affecting the sector.

When can we expect to stop talking about the GDPR? The jury is still out. Questions, interpretations and confusion are likely to still be occupying the minds of those in charge of seeing the regulation through for their charity. Our lead article seeks to clarify the topic of GDPR and consent, whose relevance extends far beyond last month's deadline.

Another major topic on the table for charity boards is governance and what the new code means in practice. Our previous Charity Workshop article outlined areas of significant changes; this article highlights the themes emerging from our clients.

Understanding impact has been seen by many as a nice-to-have. However, measuring the impact of charitable activities has become increasingly important for delivering valuable public benefit.

The government has recently supported the House of Lords Select Committee's recommendation that all charities should get independent evaluation of their impact on beneficiaries.

Our article provides information for charities analysing their impact in a strategic way.

There is plenty more to read inside including charities' management of tax risks and the news in brief section. We would also like to mention our delight at maintaining our top ranking for 'Overall Service' in the Charity Finance Audit Survey 2017/18. Since 2010, we have achieved the top position in this category more times than any other accountancy firm. We look forward to continuing to provide our clients with a quality service and creating new and lasting relationships.

I hope you enjoy your read.



**Neil Finlayson**  
Head of Not for Profit  
Kingston Smith

## GDPR – clarifying consent through email marketing

by *Benn Davis, Director, ClearComm*

Despite last month's deadline for compliance data, protection is undeniably the subject of many a boardroom conversation and a clear reliable interpretation of the General Data Protection Regulation (GDPR) is vital. However, there still seems to be much confusion around consent. Organisations seem to have been given varying advice on what they should do in order to comply with the GDPR.

Some think they need to inform their customers and supporters that their data is held and might be processed in the future in order to get agreement. Some are being encouraged to get reconfirmed consent by specifically opting in. Plenty of high-profile organisations have emailed their database of supporters asking them to opt in or receive no further emails. The question organisations most frequently ask us is, "Should we ask our supporters to re-consent?"



## Good governance

by Luke Holt, Not for Profit Partner,  
Kingston Smith

The charity sector continues to feature in the press, with what seems like a new revelation every week. After the publication of the third edition of the Charity Governance Code in July 2017, good governance remains the bedrock for the charities concerned. They will rise above the recent challenges in the sector and emerge stronger and more efficient while delivering public benefit.

At Kingston Smith, we engage with organisations to advise on the complexities of consent and how to operate within best practice.

Let's refer to the law as it stands now, specifically the Privacy and Electronic Communications Regulation (PECR). This states that an organisation cannot send a marketing email to a person without clear prior consent. Consent is considered valid if the data subject:

- understands how their personal data will be used
- freely gives consent by a positive action
- specifically consents, and
- has been informed of their rights.

If the personal data in your database was collected according to the above criteria, you probably have reliable grounds for processing the data. You can continue doing this for the time being, as consent doesn't automatically lapse. But, you must uphold the rights of data subjects by allowing them to easily opt out.

Say you have an engaging relationship with a data subject, perhaps they donate occasionally or have bought a ticket to an event; they expect you to process their data and aren't surprised to hear from you now and then. Therefore, you believe you do have consent.

Do you need to send them a re-consent email? Or are they effectively already opted in?

The PECR says that sending an email asking for consent is effectively marketing. So, if an organisation is sending marketing communications without consent, this could be unlawful and a breach of the PECR. This could lead to enforcement action by the Information Commissioner's Office.

Surely therefore, if consent is already held, it's unnecessary to ask for it again and in turn potentially confuse the recipient. If consent isn't held then any further email marketing would be unlawful.

Our best advice therefore is, don't break one law to become compliant with another.

## Our best advice therefore is, don't break one law to become compliant with another.

Kingston Smith "powered by ClearComm" has taken a very positive view of the GDPR. Our additional experience in fundraising, through our specialist Fundraising and Management department, helps us deliver the most up-to-date and relevant GDPR advice to charities.

Our GDPR experts are available for a free no-obligation chat if you want to find out more about our GDPR compliance programme including outsourced data protection and advisory services. In addition we offer an online compliance portal making it easy for you to assess your organisation's GDPR status, taking you through the GDPR journey while helping you create your own policies and procedures through an interactive wizard.

Find out more about our GDPR offerings at [www.ks.co.uk/gdpr](http://www.ks.co.uk/gdpr)

Our previous Charity Workshop article outlined the seven principles and areas of significant change in governance. Since then, we have seen certain themes develop among our not for profit clients. The themes concerning the governance reviews completed to date and the 'apply or explain' concept in the code are:

- **Terms of reference for committee structure**

As charities expand in size and complexity (variety of income streams, for example), a committee structure beneath the board of trustees can often lead to an efficient way of working. However, the committee members should follow any terms of reference to avoid committee scope creep. They should be reviewed regularly to ensure they are fit for purpose and explain the lines of responsibility, like approving, recommending and discussing agenda points. During our governance reviews, we have also seen instances of a convoluted committee structure actually preventing efficiency.

- **Risk management and control**

If there is one area that the recent challenges in the sector highlight, it is this. The previous practice of having a risk register reviewed once a year against a set of 'boilerplate' risks is long gone. A more fleet-of-foot approach to risk, the ever-changing requirements of the sector and the increasing regulation (e.g. fundraising regulators, GDPR, etc.) is required at least in the short to medium term. We are seeing charities have the risk register as a standing item on every board or relevant committee agenda, as well as those that are rebuilding their risk registers from the ground up. Both represent good governance in the current climate.



## Are you managing your charities tax risks?

by *Tim Stovold, Head of Tax, Kingston Smith*

For many charities, tax is a minefield. Constant changes, especially in day-to-day compliance obligations, mean that it is hard to keep up with what is 'right' and vital information can be overlooked. You could also be missing out on the opportunities that simple tax planning can present. We highlight the three most common areas that charities find challenging: VAT, employment tax and Gift Aid.

## You could also be missing out on the opportunities that simple tax planning can present.

- **Policies and procedures**

No governance review goes by without us being asked: "Can you provide me with a list of the policies our charity should have in place, with examples please?" This request does however have an element of good governance. When was the last time your charity reviewed its policies and procedures – not just those in place but a well researched list of those your charity should have in place? We have worked with our clients to build a 'policies register': which policies are needed, when they were last reviewed and when they will next be reviewed. Our ClearComm GDPR colleagues outline up to 20 policies that some charities will require to demonstrate GDPR-compliance.

Of course, designing and reviewing policies to ensure they are up to date is only the start. Implementing and embedding them throughout the charity are where the good governance efficiency gains really begin to develop.

- **Board effectiveness**

Along with risk management and control, we have been working on this area of the Governance Code most frequently with our clients. Most, if not all, charity boards will believe they are operating effectively, but how many have gone further to prove it?

The Governance Code is very matter of fact: "The board reviews its own performance every year [...] with an external evaluation every three years". Charities are always reviewing who they work with, how effective a certain programme has been or how effective a major fundraise was, so why not include the board? This effectiveness review can also be combined with an audit of trustee skills and diversity. The Charity Commission's recent publication 'Taken on Trust' provides an insight into the 'usual trustee board', revealing a very real skills shortage in legal, fundraising, cyber-security and IT. How does your charity compare and how would you fill those skill gaps?

We have been working with clients to begin the challenge of their governance structure. Sometimes small changes can have an enormous effect, sometimes larger changes are suggested. "We've always done it that way" doesn't mean it is the most efficient way of working in 2018.

Our charity governance team brings a wealth of sector knowledge, enthusiasm for our clients' objectives and a pragmatic approach to our work. If you think your charity could benefit from our services, please contact Not for Profit Partner Luke Holt at [lholt@ks.co.uk](mailto:lholt@ks.co.uk).

### VAT

VAT can be a significant cost to the charity sector. It is also regularly changing due to evolving rules in both the EU and the UK. This can affect how your charity generates its funding and carries out its activities. Regularly reviewing your VAT affairs ensures risks are managed and all available opportunities are identified and maximised.

Recent guidance published by HM Revenue & Customs on 'grants vs. donations' and partial exemption methods are examples of areas we have talked to our clients about in recent weeks.

### Employment tax

The issues surrounding the operation of PAYE and the treatment of expenses and benefits can often be confusing. It can be a hidden time bomb for charities and other not for profit organisations if problems are allowed to persist from year to year.

The use of self-employed contracts, the provision of accommodation and the popularity of home working are three areas we are being regularly asked to advise on.



## Gift Aid reporting

The administration of Gift Aid can be complex but is rarely reviewed within a charity as often as it should be. The ever-changing landscape of tax legislation can result in many charities being unaware that they have serious issues. Long-standing and often innocent mistakes can create significant problems.

Checking that Gift Aid donation wording is compliant and understanding the pending changes to the limits applicable to benefits provided to donors are topical at the moment.

## A helping hand

At Kingston Smith, our tax experts understand the challenges charities face in dealing with tax. To address these areas, we offer a tailored tax health check to help you:

- understand the rules and follow them
- pay the right amount of tax
- maximise all opportunities, including those potentially saving you money.

If you would like to find out more about our services to charities, please contact our tax team for a free no-obligation discussion on [020 7566 4000](tel:02075664000).

## Government recommends charities seek independent impact evaluation

*by Helen Campbell, Senior Associate (Impact), Kingston Smith Fundraising and Management*

In March 2017, the House of Lords Select Committee on Charities released a report called 'Stronger charities for a stronger society'. One of its recommendations (12) says: "All charities should be seeking independent evaluation of their impact on their beneficiaries, in order to ensure that they are delivering for them and to demonstrate this to beneficiaries, funders and the public."

This is promising and, if followed, should lead to improved charity practice and greater transparency and accountability to direct beneficiaries.

It was encouraging to see the government welcome the above recommendation in their response to the report, released in December 2017. The government attached importance to evidence of impact in commissioning decisions, stating: "Charities that can evidence their impact and value for money will be in a stronger position to successfully bid for contracts."

This acknowledgement is a reassuring confirmation that the government approves of independent impact evaluation.

The government also encourages its use in public sector commissioning decisions, as well as in demonstrating the effectiveness of a charity.

One of the main reasons charities come to us in the first place is because they want to understand how well they are delivering their services. They want an impact assessment so they can report to their funders, the public and, most importantly, the charities' beneficiaries.

At Kingston Smith Fundraising & Management (KSFM), we take impact measurement one step further and recommend it be embedded in the day-to-day functions of the charity. Instead of a one-off report, impact measurement should be a continuous process, allowing the charity to monitor its impact over the course of time. This will ultimately enable the charity to make decisions knowing which of its activities are having the greatest impact.

This approach to impact measurement is the core of KSFM's service offering. We make sure our client impact measurement projects can be properly put to use, tracking and managing the charity's ongoing impact. We're committed to using impact measurement as a strategic tool to enhance charities' future work while also showcasing their current work.

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If you're serious about measuring the impact of your organisation, get in touch with our impact experts for a free no-obligation consultation. Email us at [impact@ks.co.uk](mailto:impact@ks.co.uk).

## News in brief

### Fundraising regulation update

The Charity Commission's CC20 guidance for trustees instructs charities to follow the recognised standards for fundraising. The main standard is the Code of Fundraising Practice, maintained by the Fundraising Regulator. The regulator has been proactive in developing the code.

The regulator published revisions relating to the impact of GDPR on fundraising practice. It is also reviewing regulation of online fundraising platforms, following confusion and complaints in 2017 about public appeals from individuals who weren't registered charities. Later in 2018, the regulator will overhaul the entire code and how it is used, so it is even more accessible and easy to interpret.

Kingston Smith Fundraising & Management provides a Code of Fundraising Practice compliance auditing service. Contact us at [fundraising@ks.co.uk](mailto:fundraising@ks.co.uk) for more information.

### Significant reporting changes for charities with trading subsidiaries

An amendment to FRS 102 has recently been published, which will significantly impact accounting by trading subsidiaries of charities. Gift Aid payments from charity trading subsidiaries should not be recorded in the profit and loss account but instead be accounted for as distributions. This will affect the period in which the donation is made as well requiring a re-statement of prior period comparatives. For further details please see <https://www.kingstonsmith.co.uk/charities-trading-subsidiaries/>

Speak to your Kingston Smith contact to discuss the impact on your charity, or email [charities@ks.co.uk](mailto:charities@ks.co.uk)

### Tax relief for museums and galleries

Museums and Galleries Tax Relief has passed into law, following Royal Assent of the Finance Bill on 16 November 2017. HMRC guidance was published in February 2018.

The relief provides a subsidy of up to £100,000 per exhibition to qualifying not for profit organisations. It applies to expenditure incurred on or after 1 April 2017.

Find out from one of our tax experts whether your organisation is eligible to make a claim. We can also advise you on how to maximise the benefit. Contact Jamie Whale, Tax Manager, on 020 7566 3786 or [jwhale@ks.co.uk](mailto:jwhale@ks.co.uk)

### Charity Finance Audit Survey again ranks Kingston Smith top for overall service

Kingston Smith is delighted to have maintained its top ranking for overall service in Charity Finance's 2017 Audit Survey. Since 2010, the firm has achieved the top position in this category more times than any other accountancy firm.

For the third year running, Kingston Smith was also recognised for top charity expertise, with 100% of survey respondents saying that Kingston Smith had first-class expertise.

Neil Finlayson, Head of Not for Profit, said: "Being ranked top for overall service is a great endorsement from our clients. A big thank you to everyone for the positive feedback. I am also incredibly proud of the hardworking team here whose efforts this accolade recognises; it is a fantastic achievement for all of them."

The Charity Finance Audit Survey, now in its 25th year, helps charities assess and benchmark the audit services they receive.

### Four charities win Kingston Smith Creative Vision Award films

Kingston Smith is delighted to announce the charity winners of its fourth annual Creative Vision Award films, supported this year by the Institute of Fundraising.

For 2018, there are two winners in the small charities category: DEMAND and Access All Areas; and two in the regular charity category: Rethink Mental Illness and Book Aid International.

All four charities will receive an animated brand film worth an estimated £150,000 to help them promote their charity. The films will be created by students and recent graduates of animation and VFX under the guidance of industry professionals, as part of Bournemouth University's BFX Competition.



DEMAND



Access All Areas



Rethink Mental Illness



Book Aid International

For more information about the Creative Vision Award visit <http://cva.kingstonsmith.co.uk>

## Contact us

More information about Kingston Smith LLP and our services can be found at [www.ks.co.uk](http://www.ks.co.uk)

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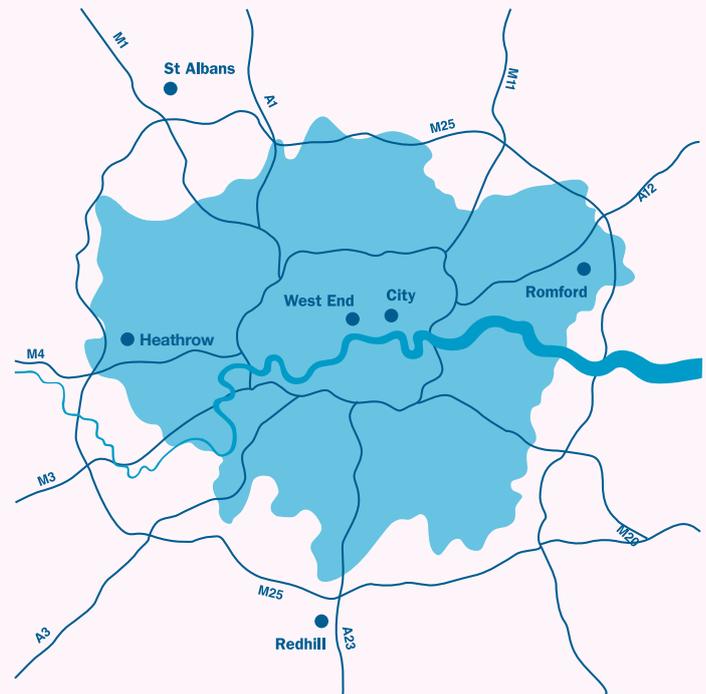
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