

# Financial Accountability Issues - Accounts Defaulting, Self Dealing and Fraud

Public Meeting Birmingham

9 July 2015

Nick Donaldson

Outreach Manager

CHARITY  
COMMISSION



# Compliance and Accounts Monitoring – A Tougher Approach to Dealing with Accounts Defaulters



CHARITY  
COMMISSION



## In 2014-15

- **86%** charities filed accounts on time
- **87%** charities filed annual returns on time
- **99%** of Sector Income accounted for

# Why are charities late?

*'Didn't realise we had to'*

*"No fine – so doesn't matter"*

*'It's the auditors delaying'*

*'We ran out of time'*

*'We filed them with Companies House'*

*'We wound up/ incorporated'*

*"Too busy with projects"*

# A Tougher Approach to Dealing with Accounts Defaulters



## Double defaulter class inquiry

- 20 September 2013: class inquiry opened
- Charities in default of their accounting obligations in two of the last five years ('double default')
- 17 charities currently in class inquiry
- 74 charities have been in the inquiry to date
- 57 charities no longer in default as a result of being in the inquiry
- £60.7m incoming funds accounted for
- Double defaulting often indicative of broader issues

# Prepare them, file them and file them early!



- **It's a basic duty** – *why should the public trust charities with their money if they cannot get the basics right?*
- More likely to have accounts scrutinised if they are late / a persistent defaulter
- **We are saying:**
  - *To grant donors* – do not fund charities who are in default of filing
  - *To the public* - do not give to charities in default in default

# Self-dealing / conflicts of interest



**CHARITY  
COMMISSION**



**Must prevent conflicts of interest from affecting decision making**

**Identify**



**Prevent**



**Record**

**Conflicts of interest usually arise where either:**

- there is a potential financial or measurable benefit directly to a trustee, or indirectly through a connected person
- a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person





## Trustees **must**:

- act only in the best interests of their charity
- not put themselves in any position where their duties as trustees may conflict with any personal interest they may have
- declare a conflict of interest as soon as they are aware that personal interests may affect decision-making

## **Transactions and dealings between the charity and a trustee, a person or a body closely connected to trustee, e.g.**

- Acquire/ lease/ borrow assets from a trustee for the charity
- Pay a trustee for a role within a trading company of the charity
- Pay a trustee (person/ company closely connected to them) for services
- Make a grant to a service user trustee/ or a service user who is a close relative

# Dealing with a conflict of interest



- How serious is the personal financial conflict?
  - *deal with it proportionately*
- Must follow specific provisions in your Governing Document
- Direct/ indirect benefit to a trustee/ connected person? - *exclude conflicted trustee from decision*
- Conflict of loyalty, but no benefit?
  - *non conflicted trustees can decide if conflicted trustee should be excluded*

- **Serious conflict, e.g. inherent conflict or involving a majority of trustees?**
  - Should you proceed at all, e.g. could you ask a different supplier?
  - You may need authorisation from the Commission
  - Inherently conflicted trustees may need to resign
- **Consider how it would look to an outside observer (tabloid test)**

- **Keep a written record in the minutes of your meetings:**
  - Declarations of conflicts of interest
  - Who was affected
  - What steps were taken to prevent the conflict affecting the decision
- **Include trustee benefits in accounts**
- **Keep a register of trustees' interests**
- **Serious breach = Serious Incident Report**

# Consequences of not acting properly



- Breach of trustees' legal responsibilities
- Decision might be:
  - capable of being invalidated
  - void from the start
  - challenged (by Charity commission/ interested party)
- Trustees may have to make good any financial loss
- Commission investigation
- Reputational damage

# Creating the right environment



- Make sure you follow your governing document - do you need to update it?
- Don't just have a conflicts of interest policy ...USE IT!
- Keep informed, raise awareness
- Take advice
- Transparency builds trust
- Read the new guidance:

***‘Conflicts of interest: a guide for charity trustees (CC29)’***

# Case study – unauthorised private benefit



- Inquiry to investigate
  - potential unauthorised private benefit by trustees
  - conflicts of interest
- £72k paid to 2 trustees (husband and wife)
- £28k for a lift conversion on their property
- Claimed were for expenses incurred
- Our conclusion – not authorised and conflicts of interest not managed
- Trustees repaid £100k to the charity
- S84 Order to review financial control and loans



# Case study 2 – misuse of funds and unauthorised benefits

- Inquiry to investigate possible misuse of funds
- Suspended one trustee (also acting as CEO) and restricted charity's bank account
- Misapplication of funds and private benefit
- Inadequate records, poor governance, one trustee had sole control of bank accounts = serious misconduct → substantial financial loss
- Voluntary liquidation – investigation and recovery action
- Two trustees disqualified as company directors (BIS)

# Fraud Related Issues



# Fraud affects all – charities are not immune



## The role of trustees: prevention

- Trustees legally responsible for ensuring funds properly used
- Must do all they reasonably can to prevent charitable assets from being misused
- Must have strong financial controls, good governance and management measures

**Increasingly important factors in determining people's trust and confidence in charities**

# Why are charities susceptible to financial abuse/ fraud?

- Too much trust, which is abused
- Lack of control by trustees and/or employees
- Dominant individuals
- As a result of mismanagement/ negligent conduct
- Poor or no financial controls/ financial record keeping and safeguards
- No questions being asked: no challenges made

# Why are charities susceptible to financial abuse/ fraud?

- Risks of fraud exist at every stage of activity
- Working internationally → increased risk
- Mobile phone banking/ text giving → new challenge
- **Spectrum of abuse** – lack of oversight – negligence/recklessness – deliberate misuse/abuse
- **Most serious cases** - misconduct, or deliberate abuse of funds for improper, criminal or fraudulent purposes

# What are we seeing?

## Last year - financial mismanagement/abuse and fraud issues in:

- 84% of closed investigations
- 51% of closed assessments
- 28% of closed monitoring cases
- 19% of RSIs (11% - theft; 8% - fraud/ money laundering)
- **Currently in:**
  - 88% open investigations
  - 36% of open monitoring cases



- Aligning our approach to new National Policing Fraud Strategy 2015
- Fraud resilience assessment tool made available to charities to self-assess this year
- Enhanced joint working with key partners
- Intelligence driven focus - linked to Action Fraud reports and analysis
- Promoting publicly available guidance for charities on website

# Emerging Issues/Themes

- Dominant individual(s)
- Poor or no financial controls and safeguards, including little or no scrutiny or monitoring
- Poor financial and accounting records (in some cases, none at all)
- Poor decision record keeping
- No questions asked: no challenges made
- Late filing of accounts or no accounts at all
- Tardy supervision over charity collections
- Poor due diligence / monitoring by grant-makers



# Case Study – Gift Aid fraud

- False claims submitted over 3 years
- Charity grew dormant, but over £850,000 was claimed by the CEO in gift aid
- The Commission worked with HMRC
- Proceeds → house deposit for the CEO and wife
- £150,000 → their personal bank account, 27 businesses and other accounts
- CEO pleaded guilty to fraud and money laundering
- His wife found guilty of money laundering

# Fraud – Why report?

## Report to: Action Fraud; the Commission (RSI); Crime stoppers reporting line

- Action taken where it can
- The 'Big Picture': to deter and disrupt fraudsters
- The unrecognised value of intelligence
- Steps to protect and recover assets
- A proper (public) account of the funds lost to charity

# Ask yourself today....

- How vulnerable are we?
- Has our charity got the basics in place?
  - Good financial controls and procedures that everyone knows about and are followed
  - Never signing blank cheques
  - Regular reporting to the trustees on financial matters
  - A good culture of being vigilant and not afraid to ask or challenge
  - Reporting concerns to the police immediately
  - Reporting Serious Incidents to the Commission

**Questions?**

**CHARITY  
COMMISSION**

