

The duty of Auditors to report matters of Material Significance to OSCR and the Charity Commission

Introduction

The Office of the Scottish Charity Regulator ('OSCR') and the Charity Commission for England and Wales ('the Charity Commission') and the value the objectivity and independence that auditors bring to their work and the assurance that the audit process provides makes an important contribution to maintaining public trust and confidence in charities. Auditors in both Scotland and England and Wales have a common statutory duty to report matters of material significance to charity regulators. This important duty will be a key contribution to the ability of charity regulators to take timely action and so they have agreed a common list of matters of material significance to assist the auditor in reporting important matters on a timely basis. The sooner the charity regulators are made aware of a matter the sooner it can be considered and, where appropriate, regulatory action taken to protect a charity, its beneficiaries and its charitable assets.

Guidance

Section 46 of the Charities and Trustee Investment (Scotland) Act 2005 places a duty on the auditor of a Scottish charity to report matters of "material significance" to OSCR. The Charities Act 1993 section 44, as amended by the Charities Act 2006, places a similar duty on the auditor of a charity registered with the Charity Commission to report matters of "material significance" to the Commission.

The duty to report arises where the auditor, in the course of their audit, identifies a matter, which relates to the activities or affairs of the charity or of any connected institution or body, and which the auditor has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by OSCR of its functions under sections 28, 30 or 31 of the Charities and Trustee Investment (Scotland) Act 2005 or the exercise by the Commission of its functions under section 8 or 18 of the Charities Act 1993.

Reporting a matter to SOCA does not relieve auditors of a duty to report that matter to charity regulators where the information is of material significance to their function. A tipping off offense is not committed where a disclosure is not likely to prejudice an investigation. Subject to compliance with money laundering legislation regarding "tipping off", in the circumstances leading to a right or duty to report, the auditor is entitled to communicate to charity regulators in good faith information or opinions relating to the business or affairs of the entity or any associated body without contravening the duty of confidence owed to the entity. In addition, in Scotland, the 2005 Act (Scotland) provides that no obligation as to secrecy or other restriction on

disclosure of information, however imposed, prevents an auditor from exercising the auditor's duty to report matters of material significance to OSCR. In England and Wales, the Charities Act 1993 provides additional statutory protection for the auditor as no duty, for example confidentiality, is regarded as contravened merely because of any information or opinion contained in the report.

The reporting of a matter of material significance is a separate report from the auditor's report on the accounts. The Charities and Trustee Investment (Scotland) Act 2005 and the Charities Act 1993 require the report to be made immediately the matter comes to the auditor's attention and in England and Wales the Charities Act 1993 requires that this is done in writing. There is no requirement under Scottish law for a report to be made in writing but it is recommended to do so.

It is not part of the reporting duty to require the auditor to perform any additional scrutiny work as a result of the statutory duty nor is the auditor required specifically to seek out reportable matters. The auditor does however include procedures within the planning processes to ensure that members of the audit team have sufficient understanding (in the context of their role) to enable them to identify situations which may give reasonable cause to believe that a matter should be reported to the regulator. Where a matter comes to light relating to a previous financial year which would give rise to a duty to report, then the auditor still makes a report.

In order to recognise whether a situation is likely to be of material significance to a regulator's function an understanding is needed of those matters which either due to their nature or potential financial impact are likely to require evaluation and, where appropriate, investigation by the regulator.

Both OSCR and the Charity Commission will always consider the following to be of material significance and hence reportable:

- matters suggesting dishonesty or fraud involving a significant loss of, or a major risk to, charitable funds or assets;
- failure(s) of internal controls, including failure(s) in charity governance, that resulted in a significant loss or misappropriation of charitable funds, or which leads to significant charitable funds being put at major risk;
- matters leading to the knowledge or suspicion that the charity or charitable funds have been used for money laundering or such funds are the proceeds of serious organised crime or that the charity is a conduit for criminal activity;
- matters leading to the belief or suspicion that the charity, its trustees, employees or assets, have been involved in or used to support terrorism or proscribed organisations in the UK or outside of the UK;
- evidence suggesting that in the way the charity carries out its work relating to the care and welfare of beneficiaries, the charity's beneficiaries have been or were put at significant risk of abuse or mistreatment;
- significant or recurring breach(es) of either a legislative requirement or of the charity's trusts;
- a deliberate or significant breach of an order or direction made by a charity regulator under statutory powers including suspending a charity trustee, prohibiting a particular transaction or activity or granting consent on particular terms involving significant charitable assets or liabilities; and

- the notification on ceasing to hold office or resigning from office, of those matters reported to the charity's trustees.

These matters are considered central to the integrity of a charity and as such will require evaluation and where appropriate investigation by the regulators. OSCR and the Charity Commission consider all such reports to have a very high intelligence value. Both take a risk based and proportionate approach to inquiry work when deciding whether to open an inquiry. The duty to report applies to the auditor who must make a report whether or not the matter has already been notified to other regulators or agencies and whether or not the trustees have already advised the charity regulators, for example, by making a serious incident report to the Charity Commission under separate requirements applying to trustees.

Where auditors make a report, they may not have all the information but should be prepared to provide as much relevant information as possible about the matter(s) they are reporting.

Matters which OSCR and the Charity Commission have indicated are likely to be of material significance are set out on the charity regulators' websites. Other sources of useful information relevant to the particular jurisdiction are available from the charity regulator's websites including:

- Statements of Results of Inquiries are published by the Charity Commission following the completion of each formal inquiry and identify particular issues that have led to the inquiry;
- 'Back on Track' - an annual report published on the themes and wider issues arising from its compliance work.
- Appendix 5 of the Charity Commission's Directions and guidance for independent examinations which provides independent examiners with basic guidance as to the type of issues that they may encounter during an examination which will require their consideration;
- Annual Returns (in Scotland, Supplementary Monitoring Returns¹) which signpost a number of the areas that the relevant regulator considers significant; and
- Inquiry reports published by OSCR under section 33 of the 2005 Act (Scotland).

The auditor's right to report to charity regulators under the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Act 1993 Act

The auditor also has a broad discretionary right to report matters that they believe may be relevant to the work of the charity regulators but they are not under a duty to report such matters.

OSCR and the Charity Commission consider such reports to have considerable intelligence value and welcome these submissions. Given the broad discretion permitted it is not appropriate to list instances for reporting but the auditor may usefully review matters which were not considered material relating to the statutory

¹ Completed by charities with gross income over £25,000.

duty and matters upon which trustees are requested to provide additional information as part of the annual return process.

Matters falling within this discretionary category are likely to be indicative of significant risks to charitable funds or their proper application and would therefore normally be relevant to the work of the regulators. Where such a matter arises, the auditor may discuss the matter with the trustees to identify whether it remains a matter of concern and whether the trustees have taken or are taking action which can reasonably be expected to remedy or mitigate the effect on the current or future years.

Although the auditor enjoys a discretion as to whether to make a report of a matter relevant to the work of OSCR and the Charity Commission, it is recommended that the auditor documents any relevant matters identified in the course of the audit and documents the basis of any decision not to report a matter falling within this discretionary category.

Ceasing to hold office

In addition to the duty to report matters of material significance, Regulations under the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Act 1993 provide that 'Where an auditor appointed by charity trustees ceases for any reason to hold office he shall send to the charity trustees a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to their attention or, if he considers that there are no such circumstances, a statement that there are none; and the auditor shall send a copy of any statement sent to the charity trustees under this paragraph (except a statement that there are no such circumstances) to...' OSCR and/or the Charity Commission.

Matters that may require consideration in relation to this duty include:

- disagreement over opinions expressed or to be expressed in an auditor's report;
- disagreement over any disclosure made or to be made to the Commission in respect of a matter of material significance;
- disagreement over any accounting policy, assumption, financial judgment or disclosure made in the accounts or in the preparation of the accounts;
- concerns over any matter which is believed to give rise to a material risk of a loss of charitable funds; and
- lack of co-operation or obstruction in the context of an audit.

Cross Border Charities

Where a charity registered in Scotland also operates in England & Wales it will need to be registered with the Charity Commission as well as OSCR. For such cross border charities neither regulator is considered to be the principal regulator and both will have an interest in receiving reports. The auditor therefore makes a report to both regulators who will determine which regulator takes forward the issues raised by the report.

Reporting gateways

To ensure reports are handled efficiently and immediately, the auditor makes reports to the regulators as follows:

- To OSCR by e-mail - info@oscr.org.uk
- To the Charity Commission by e-mail – whistleblowing@charitycommission.gsi.gov.uk

Within the body of the e-mail, or in an attachment thereto, the following information is requested:

- the auditor's name and contact address, telephone number and/or e-mail address;
- the charity's name and registration number (if applicable);
- whether the auditor is reporting a matter of material significance, or is exercising his right to report;
- under which of the eight headings of reportable matters the report is being made;
- a description of the matter giving rise to concern and the information available on the matter reported, where possible providing an estimate of the financial implications;
- where the trustees are attempting to deal with the situation, a brief description of any steps being taken by the trustees of which the auditor has been made aware;
- if the report concerns terrorist, money laundering or criminal activity confirmation that the auditor has already notified the Serious Organised Crime Agency and/or the Police as appropriate;
- if the report concerns the abuse of vulnerable beneficiaries details of whether the auditor has contacted the Police and/or Social Services.

In Scotland, there is no legislative requirement to make the report in writing, but it is recommended that a written report or record of any verbal report is forwarded to:

OSCR
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

In England and Wales the Charities Act 1993 requires the report to be in writing and therefore a hard copy of any report made orally is also forwarded to:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

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