



# Charity Briefing

Keeping you up to date with events in your sector.

## Welcome

**Welcome to this edition of Charity Briefing and I hope that you find the articles of interest to you.**

Our services to charities are delivered by specialists not only in charity audit and accounting but also tax, VAT, fraud and due diligence on acquisition, feasibility studies and restructuring. As one of our specialists, we are delighted that Dr Stephen Hill, the Head of our Fraud and Forensic group was commissioned to write the second edition of "Corporate Fraud: Prevention

and Detection" which is profiled in this newsletter.

If as a result of these articles, you have any questions about our services, please contact myself or other members of our charity team. I look forward to seeing you at one of our upcoming charity seminars, details of which are available on our website.



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## New Penalties for breaches of the Data Protection Act - Are you compliant?

**The Information Commissioner's Office (ICO) is reminding charities that personal information must be handled securely, after finding the Alzheimer's Society in breach of the Data Protection Act.**

The Alzheimer's Society reported three separate breaches involving personal information to the ICO during 2009.

For instance, several unencrypted laptops were stolen during a burglary at the Society's office in Cardiff last August. The laptops were neither physically secured by cable locks nor locked away securely. One of the laptops contained personal details including names, addresses, national insurance numbers and salary details for about 1,000 staff across England, Wales and Northern Ireland.

A raft of new legislation affecting business is set to come into force in 2010. Employment and the environment are the main areas to come under increasing regulation as is the DATA PROTECTION ACT.

At this moment in time, the Information Commissioner's Office (ICO) are going through two Government consultations which will see the introduction of new penalties, unlike any seen before, for breaches of the Data Protection Act (DPA) 1998. The ICO have also been granted new statutory powers to audit Government departments.

The data protection regime in the UK has never looked so intimidating.

**What penalties are likely to be available to the ICO?**

- Fines of up to £500,000 for serious contraventions of the DPA;

- 25 Monetary Penalty Notices (MPNs) are expected to be issued each year by the ICO;
- Prison Sentences for deliberate or negligent customer data leaks by individuals within an organisation;
- DPA compliance costs are set to rise accordingly, for UK organisations.

**What are the two Government consultations about?**

- The first consultation is on the maximum level of civil penalties for serious data protection breaches. The Ministry of Justice's consultation marks the last stage in bringing in this new enforcement power of the ICO.
- The second consultation is on whether a custodial sentence should be introduced for the offence under section 55 of the DPA of knowingly or recklessly obtaining or disclosing personal data and, if so, what the maximum sentence should be.

The new statutory power the ICO has just gained gives them new powers i.e. to audit Government departments without consent, thanks to the passing of The Coroners and Justice Act 2009.

It is clear that there is now a narrow window of opportunity for organisations to review their privacy practices, risk registers and information governance in order to prepare for what will be a much more hostile regulatory environment. This is



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therefore an opportunity for us to advise our clients and assist in any way we can through our Data Protection Compliance Audit and Consultancy Service.

The ICO for sometime have been criticised for their lack of power and intervention when it comes to data protection/ security and governance. This is a turning point and any organisation failing to meet the standards face a troubled time with the possibility of going to jail.

On a final note although we first outlined the Payment Card Industry (PCI) Data Security Standard (DSS) in our autumn Charity Briefing it links in neatly with data protection and compliance.

It is important to remember this is a compliance standard (awarded on a yearly basis) that has been developed in order to help organisations proactively reduce the risk of

data compromise and the effects of fraud when dealing in credit card data.

Failure to be annually certified can become an issue if you have a security breach and your customers' card details are stolen, in which case penalties levied by the card schemes and costs can be heavy depending on the number of cards compromised. Even where a merchant is certified this does not protect them from potential penalties if it is deemed that their own actions through negligence, omission or accident contributed to a breach. Compliance to both PCI DSS and the DPA will help our clients so act now and stop the risk of a punitive fine or prison sentence.

For more information on either the Date Protection Act or PCI DSS contact either Mark Kinsella or myself as we would like to hear from you.

## VAT changes

### On 1 January 2010 the EU wide rules concerning the place of supply of services changed and this could result in many charities paying more VAT.

The place of supply rules determine where a supply takes place for VAT purposes. These rules are important as UK VAT is chargeable on supplies made in the UK meaning that they effectively determine if UK VAT must be charged.

Prior to 1 January the basic rule for business to business services, as opposed to services provided to private individuals, was that the service was supplied where the supplier belonged. Thus if you were a charity with a single establishment in the UK and you supplied say administration services to an organisation in Africa then you will have needed to account for UK VAT as you belonged in the UK.

There were however, many exceptions. Services closely related to land were supplied where the land was situated and 'performance services' such as face to face education, conferences or even theatre were supplied where they were performed. There was also an exception provided with Schedule 5 of the VAT Act which covered a wide range of services such as professional services, including consultancy and advertising.

In practice it was often debatable if services fell within or outside the exceptions. Was the service supplied really administration and subject to UK or should it have been

regarded as consultancy and thus treated as supplied where the customer was based?

The 1 January changes alter the basic rule so that a business to business supply of services is regarded as being made where it is received - essentially similar to the old schedule 5 exceptions. This is helpful in that it means that if you are making my example supply of administration you no longer need to try and give the service the features of consultancy in order to not account for UK VAT.

Unfortunately there is a downside. The place of supply rules also determine the place of supply of services received in the UK. If you were to buy a service of administration from Africa then following 1 January there is no doubt that it is supplied in the UK. So as to avoid the need for overseas suppliers of services to VAT register in the UK, the VAT system incorporates something called the 'reverse charge' which requires the customer of a non resident supplier to self account for the output VAT due instead of the supplier. The customer then recovers this VAT in accordance with their normal VAT recovery procedure.

For example, if the supply of African administration you buy relates to your taxable business activities then you will get full recovery and the charge is neutral; if however, as is more likely, the supply relates to an activity on which you get no recovery then you will be paying more VAT.

These changes will particularly hit the charity sector because the UK has used them as an opportunity to change when a reverse charge will apply to the charity sector. Prior to 1 January it would not apply if the service was used for a non business purpose. Thus if you hired a consultant in Africa to undertake work on a grant you intended to make, then since this would likely be non business activity, you would not need to apply the reverse charge.



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Unfortunately the UK's position was not supported by the EU or the courts and a distinction has now been drawn between non business and private. If you buy a service for a private purpose then there is no reverse charge; if however you buy the service for a non business but non private purpose then, if you are VAT registered, you must apply the reverse charge. Thus from 1 January our example charity receiving a supply of consultancy from Africa must apply the reverse charge and as a consequence will pay more VAT.

VAT being VAT there is always a but. In this case there are lots of them. For example, is the money you are giving the consultant payment for a supply or is it outside the scope, similar to a grant or donation? Have you any 'fixed' establishment in Africa which is more closely connected to receiving the supply than you are? What constitutes a fixed establishment is too big a subject for a short article but it is worth mentioning that an agency can in some instances constitute one.

It follows that if you are similar to my example charity paying money to an African consultant then you will have to do some thinking. You will need to consider the VAT status of any offices or associates you have in Africa and whether the consultant is making a supply to you. These are obviously both questions that can have a knock on impact elsewhere such as upon your accounting policy.

These changes have a potentially huge impact on international charges and it will pay to take advice as to how they affect you and whether there are ways of mitigating them.

### Lennartz

In the article above I explain how there has been a distinction drawn between non business use and private use. VAT registered charities often undertake non business activities but not private ones. This is in contrast with other VAT registered persons such as, for example, plumbers. A plumber may buy a van to undertake his business and indulge in his weekend hobby of surfing. In this case the van will be used partly for business and partly non business purposes. In contrast a charity may buy a van to use for its charity shop and to assist with its non business projects, however, this non business purpose is not private use like the plumbers.

If you purchase an asset for business and non business purposes you have had two options. You can apportion the VAT and only recover the proportion relating to business use or you can apply Lennartz. This allows you to fully recover the VAT and then account for output VAT on the private use. It follows that Lennartz is good for cash flow, especially for assets larger than vans such as new HQ offices.

Unfortunately the new EU distinction between private and non business use has caused HMRC to withdraw Lennartz for new purchases from 22 January 2010 where the non business use is non private. From this point existing schemes can continue but new ones will only be allowed on application to HMRC and if you can show that the finances of the project are dependent upon Lennartz applying.

It follows that my example surfing plumber will be able to use Lennartz when he buys his new van but not my example charity.

HMRC have stated that they will take a strong line against charities that try to argue EU law and avoid making output tax payments for existing schemes but still retain their input tax recovery on the basis of old UK law.

We covered the likely removal of Lennartz in earlier briefing but it is still obviously sad that this useful relief has been removed.

If you have any questions on Lennartz or maximising your VAT recovery in other ways contact the Chantrey Vellacott DFK VAT team.

## Website Monitor

### Charity Commission warns charities of direct debit fraud threat

The alert below was issued as part of a new initiative by the Charity Commission's Compliance Division to inform trustees and members of the public of scams or fraudulent activity carried out within the charitable sector. The alerts will also be posted on the Commission's website.

#### Warning about fraudulent direct debit payments

##### What is the issue?

The Commission has been made aware of a number of instances where fraudulent direct debits have been set up from charity bank accounts, resulting in the abuse of charity funds.

##### What can charities do?

**Prevention** – write to your bank and inform them that no further direct debits should be set up without the specific approval of certain named authorised personnel.

**Detection** – you should ensure that you regularly check your bank statements and ensure the bank statements reconcile with the charity records. Any unexplained or unusual direct debits must be investigated.

**Redress** – under the direct debit guarantee scheme, if the charity has been wrongly paying a direct debit, it can reclaim this money from the bank. It is then the bank's responsibility to reclaim this money from the supplier.



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**A spokesperson for Bacs Payment Schemes Limited said:** "Paperless Direct Debit is a highly reliable, safe and cost effective method for organisations, including charities, to collect regular payments. Instances of Direct Debit fraud are very low when compared with alternative payment methods like cheque or card. We treat any instances of Direct Debit fraud extremely seriously, even when they take place rarely. We are pleased to work with the Charity Commission in providing this alert to the charity sector".

#### **Advice from Bacs**

Organisations setting up non paper Direct Debit Instructions must verify the identity of the Payer prior to collecting any money; the methods used vary depending upon the associated commercial risk – all are agreed and approved by the organisation's sponsoring bank. For organisations providing services and goods, for example, Bacs makes a list of stringent verification measures available in a secure

area of its website. However, for obvious reasons, and in the interest of fraud prevention, these measures must remain confidential.

Organisations collecting by Direct Debit must also confirm, in writing, the Instruction given by the customer within three days of setting up the Direct Debit. Alternatively the organisation must write and give Advance Notice of the transaction, normally ten working days prior to it leaving the customer's account. In line with standard banking industry recommendations, all consumers are advised to keep their personal details secure, regularly check their bank statements, monitor their bank balance, open all post and dispose of it with care.

For more information about charity trustees' legal duties and responsibilities for ensuring strong financial controls please see the Charity Commission's guidance **CC8 Internal Financial Controls for Charities**.

## **Now's the time to do it online**

### **Commission reminds charities of breadth of online services**

The Charity Commission is reminding charities and their trustees of all the services they can access **online on the Commission's website**. Charities can view or amend their charity details online, complete Annual Returns or Update forms online, as well as send the Commission Trustees' annual reports and accounts.

People interested in setting up a charity can also access all the information they need and apply to register online. The Commission is currently registering charities online in an average of twelve days - half the time of paper applications.

**David Locke, Director of Charity Services said;** "More charities than ever are using our online services. It makes much more sense, speeds processes up for charities, and ensures that documents are not delayed in the post. Last year there was a 60 percent increase in use of our online services, with over 75 percent of Annual Return or Update submissions by charities made online. It really is a much more efficient way of working for charities."

The Commission website also provides a comprehensive set of resources and news for charities concerning the impact of the economic downturn, including the **'Big Board Talk - 15 questions all charities need to ask'** as well as a comprehensive list of guidance and reports, press releases and information about Commission events and meetings.

## **New Charity Commission online toolkit to help trustees manage risks to their charity**

### **First chapter covers charities and terrorism (launched November 2009)**

The Charity Commission, launched an online toolkit for trustees on protecting their charity from potential harm and abuse.

Trustees are responsible for safeguarding their charity and its beneficiaries; in discussions with the Commission many have asked for more detailed advice to help them do so. This new resource, **Protecting charities from harm**, is a practical guide which aims to give trustees the tools they need to manage risks and protect their charity from harm and abuse.

The toolkit launched with its first chapter, **Charities and terrorism**, which provides key information on the UK's counter-terrorism legislation and how it affects charities' work. Although proven instances of terrorist involvement in the charitable sector are rare, they are completely unacceptable. **Charities and terrorism** has been produced in response

to demand from the sector and developed in consultation with a range of charities through the Commission's outreach work. The approach set out in the new guidance arises from the commitments set out in the Commission's counter-terrorism strategy.

The enormous diversity of the sector means that the risk of links to terrorism does not apply equally to all charities and the Commission does not take a 'one size fits all' approach to the issue. Nevertheless, all trustees must be vigilant about the potential risks associated with terrorism. The summary at the beginning of the chapter highlights key issues that all trustees should be aware of.

**Charities and terrorism** is particularly aimed at and will be helpful to those charities which, whether working at home or abroad, are likely to be exposed to greater risk of abuse. This chapter's modules contain more detailed advice to help them assess and manage the risk of links to terrorist activity or of terrorist abuse.

**Andrew Hind, Chief Executive of the Charity Commission, said:**

"Charities make a vital contribution to society and building community cohesion. We fully recognise the importance of enabling charities to undertake valuable and essential humanitarian and other work in the UK and overseas. This guidance is designed to help them do just that whilst managing the risk of harm or abuse. I'm grateful to the charities which have helped us produce this first chapter - their ideas have been vital in helping us develop its scope, format and content.

Some of the problems highlighted in our new toolkit are rare, but there is no room for trustees to be complacent about managing any risks their charity may face. Whatever a charity's size, activities or area of operation, the implementation of strong governance arrangements, financial controls and risk management policies and procedures will ensure that it is better safeguarded against a range of potential harm."

**William Bingley, Chief Executive of the Abaseen Foundation UK, said:**

"It is absolutely essential that charities effectively protect themselves from harm including terrorism. This toolkit provides invaluable support for trustees and, having been involved in the consultation, I strongly recommend it to charities: it can only improve our practice."

Three further sections will be published over the coming year. Chapter Two will cover safeguarding charity funds and will define trustees' responsibilities for due diligence with donors, partners and beneficiaries, along with monitoring, verification and reporting on the end-use of funds. Chapter Three will cover safeguarding people, property and reputation. Both chapters will use case studies, good practice examples and checklists to show in a practical way how trustees should manage the risks to their charity's beneficiaries, funds and reputation. The final section will be an illustrative case study archive.

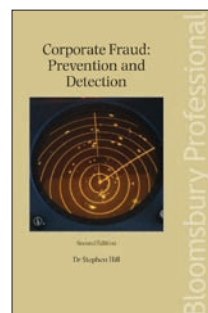
## Corporate Fraud: Prevention and Detection

**Dr Stephen Hill, head of the fraud and forensic group at Chantrey Vellacott DFK has published a book entitled Corporate Fraud: Prevention and Detection.**

The book published by Bloomsbury on 24 December 2009 is available online at <http://www.tottelpublishing.com/1149/Bloomsbury-Professional-Corporate-Fraud--Prevention-and-Detection.html>

Fraud has been estimated to cost our economy at least £20bn a year making the impact of fraud second only to the impact of drug trafficking in the UK. Fraudsters operate ever more complex schemes leaving business owners vulnerable to both financial and reputational loss. Its publication therefore comes at a critical time for many businesses.

Corporate Fraud: Prevention and Detection is a 200 plus page comprehensive guide covering all aspects of corporate fraud in its various forms. It uses illustrative case studies and examples of fraud, both international and the from



the UK, as well as guides on what to look out for and how to prevent fraud. It puts solid forensic accounting skills into plain English, making the title an important addition to the library of anyone with responsibilities in corporate governance and the combating of corporate fraud.

Royalties have been donated to Victim Support - the independent national charity created for people affected by crime.

For further information please contact Stephen Hill.



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## New editor of charity briefing

**After a number of years as our editor, Nick Morgan has stepped down to enjoy a well earned retirement.**

I would like to thank him for all his efforts both in regards to ensuring that the Briefing was so successfully received both by clients and contacts alike and for all his work with the Charities Group since its inception some 15 years ago. I am proud to have been asked to take over the role and my first thought is to speak directly to our readers to see if we can improve on what we currently do. If there are particular issues that you would like to hear more about, please drop me an email at the address shown and we'll try to include these in future editions.

In the meantime we have introduced one new feature and that is the FAQ section. We frequently find that clients from a diverse range of charities ask us the same question so we'll try and share that information more widely.

Finally, with the merger of Heathcote and Coleman in Birmingham late last year with Chantrey Vellacott DFK we welcome over 20 new charity clients into the fold and look forward to working with them over the coming years.



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## FAQ

**Q: Can a trustee of a charity be a paid employee?**

**A:** The short answer is yes they can but...! There are lots of caveats particularly those centered around conflicts of interest and ensuring there is openness and transparency. For example the trustees would not wish to be accused of favouritism. Any recruitment for a post should be open and the remaining trustees would need to demonstrate that the trustee who is being employed is the best person for the job. This should not be confused with smaller charities such as a grant making charity where the trustees do all the work and there is express permission in the trust deed for them to be paid a fee for doing the work. Remember these issues also come into focus when a spouse or a partner of a trustee seeks employment with a charity.

If there is a wish to employ a trustee but there is no express authority in the trust deed to do so then the Charity Commission need to be approached for permission in various circumstances. A fuller explanation of these circumstances and other related issues can be found in CC11 (Trustees expenses and payments) which can be downloaded from the Charity Commission website on [www.charitycommission.gov.uk/publications](http://www.charitycommission.gov.uk/publications)

**Q: Our charity wishes to employ an individual to carry out some counselling for clients of our inner city charity. Do I have to deduct tax and NIC or can I rely on them to give me a monthly invoice for the number of hours they work for us?**

**A:** The key word here is "employ". If the consultant is working on a contractual basis in your premises, with your clients, under your direction and using your equipment then clearly they are employed under the tax and national insurance legislation and therefore PAYE should be deducted. If they are being used on an ad-hoc basis, providing this service to a variety of other organisations, using their own equipment, planning their own work and utilising their own premises then they are probably self-employed. Note the word probably because it is not always cut and dried. The experts refer to a comparison of a "contract of service" and a "contract for service". Anyone thinking of using someone on a self employed basis should always run the contract past their tax advisors to ensure they do not fall into the "employment" trap. Better to be safe than to find you have a hidden liability for additional tax and national insurance together with the interest and penalties thereon.

## Who to Contact

**For further information or advice, please contact the author of the relevant article, your usual Chantrey Vellacott DFK partner or one of the following:**

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