

Record-keeping

Last year the Charity Commission published *Charities Back on Track*, a report reviewing the lessons learnt from its investigations and regulatory casework. The report highlighted inadequate record-keeping as one of the key areas in which charities continue to fall into difficulty, not least in regards to financial management.

Trustee duties

Trustees have a duty to act in the best interests of their charity and its beneficiaries, both current and future. Rather than seeing record-keeping as a box-ticking exercise, your charity should view document management as a way that your trustees can demonstrate good governance. It accordingly serves no purpose if you achieve an immaculate system for filing and managing the minutes of your meetings, if they do not document the reasoning behind major decisions. Similarly, there is no point in making detailed minutes and never being able to find them.

Company law

Incorporated charities must comply with the obligations of the Companies Act 2006 ('the Act'). The Act states that a company must keep all minutes of both general (members') and directors' meetings and copies of all resolutions of the charity for at least ten years. The records must be kept in a way which allows them to be made available for inspection. It is also good practice to keep for the same period written professional advice on which board decisions have been based.

Charities can decide for what period they will keep minutes of committees such as audit committees. There are no requirements for audit committees to maintain records above and beyond those maintained by the charity as a whole. A prudent approach would be to keep these minutes for the same ten-year period. There are no legal requirements on individual trustees to keep personal copies of minutes, but many trustees find it useful to keep their own copies of minutes and other documents such as high-level board policies and delegated authority at least for the period while they are a trustee, and possibly for a few years thereafter. This may be particularly important for trustees of unincorporated charities where there are no company law requirements on the charity and trustees are at greater risk of personal liability.

There are also statutory documents which must be kept for the lifetime of the charity. These include (and are not limited to), directors' service contracts, registers of directors' conflicts of interest and the registers of members and directors. Charities are notoriously bad at maintaining their register of members, despite the important constitutional powers that members have. A charity's 'lifetime' extends to six years after dissolution or 20 years if the charity is struck off the register of Companies House rather than dissolved.

Location of records

Companies House assumes that the statutory documents will be kept at your charity's registered office. If for any reason this is not the case (for example if your charity uses the address of your solicitor as your registered office) it is necessary to notify Companies House of the address at which your records are held. The alternative to the registered office is referred to as the SAIL address ('single alternative inspection location address').

Format of records

The statutory documents may be kept electronically, provided that they can be easily printed out. However, minutes and resolutions must be maintained in a way which makes it as difficult as possible to amend or tamper with them, for example a pdf version. If your charity uses electronic filing, it would be good practice to maintain at least two formats which are regularly backed up.

Financial records

The Act dictates that financial records must be kept for at least three years from the date on which they were made. Despite this minimum period, it would be prudent to keep at least one set of annual accounts permanently. It is important to note that 'financial records' means much more than just your annual accounts. Other documents such as authorisations of expenditure and records of your assets and liabilities should be kept alongside the relevant accounts. Again, it is important to keep in mind that the purpose of financial record-keeping is to demonstrate that your finances are transparent and auditable. There may be reasons to keep financial records for extended periods. Grants for example, especially from government or local authorities often require records to be kept for six years after the relevant grant expires. Tax records should also be retained for at least

six years. If in doubt, your accountant will be able to provide advice as to precisely what should be maintained within your financial records.

Contracts

A contract is any legal agreement, and it is essential that your charity can refer to the final copies of such agreements to be certain of its entitlements and obligations. You should take a considered approach towards the retention of contracts. Some, such as contracts entered into as a deed, are enforceable for a period of 12 years. With others, it will be a question of reviewing the contract and deciding an appropriate time for retention. The majority of contracts should be kept for at least six years after expiry. As with your financial records, it is important that the documentation relevant to any contract is also retained, for example minutes of meetings documenting the decision to enter into a contract and any specialist advice obtained. It is also vital to retain records of negotiations in the event that something goes wrong and litigation ensues.

Unincorporated charities

Charities which are established as unincorporated charities may be free from the duties enforced by the Act, but that is not to say that record-keeping should be any less of a priority. The Charities Act 2011 provides that unincorporated charities must maintain their financial records for a minimum of six years from the end of the financial year in which they were made.

The first place to check for record-keeping requirements is your constitution. This may set out specific guidelines for how records should be maintained. If the constitution is silent, it is a question of determining the most effective and transparent methods

of record maintenance to ensure trustees can comply with their duties. For absolute peace of mind, best practice may be to voluntarily adopt the procedures in place for companies.

Implementation

Relaxations in company law mean that it is no longer a legal obligation for private companies to appoint a company secretary. Despite this, you may wish to maintain the role of company secretary to help facilitate good record-keeping and ensure someone is responsible for compliance with filings at Companies House and the Charity Commission.

Regardless of whether your charity decides to dispense with the role of company secretary, ensuring that someone is responsible for maintaining a clear policy, and ensuring everyone knows what they are required to keep and where, is essential.

Record-keeping is a fundamental element of risk management. By taking time to ensure compliance, record-keeping need not be the intimidating task it might at first seem, leaving more time to focus on the charity's core objectives. ●

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