

## **Governance and Commercial - Are You a Fit and Proper Person?**

The Finance Act 2010 introduced a “fit and proper persons” test to ensure that charities, community amateur sports clubs and other organisations entitled to UK charity reliefs are not managed or controlled by individuals who might misuse the valuable tax reliefs the organisation receives. From 1<sup>st</sup> April 2010 this test applies to charities claiming repayment of tax under Gift Aid, but it is to be extended to other charity tax reliefs later this year. The test is intended to make it harder for sham charities and fraudsters working within a charity, or targeting a charity, to abuse charity tax reliefs.

The fit and proper persons test applies to the “managers” of the charity. The term “managers” applies to the trustees of charities, directors of corporate charities and any other officials having to day to day control over the running of the charity and any other persons who are able to exert direction or influence over the running of the charity or the application of its assets.

HMRC has issued a basic guide on this test as well as a more detailed guide which is available from their website, please [click here](#). An individual is “fit and proper” if they ensure that charity funds and tax reliefs are used only for charitable purposes. HMRC assumes that all people appointed by charities are fit and proper persons unless they hold information to show otherwise. Provided charities take appropriate steps on appointing personnel then they may assume that they meet the management condition at all times unless, exceptionally, they are challenged by HMRC.

HMRC has suggested a model declaration for fit and proper persons which confirms that such persons will ensure that funds are used for charitable purposes and also discloses certain information about their past that may impact on whether or not they are indeed “fit and proper”. All new trustees should be provided with the guidance as part of the material included in their trustee induction pack. In addition they should be asked to sign the declaration or the charity should incorporate the additional items referred to in the HMRC declaration into their current trustee’s declaration so that the charity has written evidence to show that it has given proper consideration to the suitability of people they appoint to positions of trust or influence in the charity, where they are able to exert control over the charity’s finances and tax affairs.

In addition to the HMRC guidance governance good practice and Charity Commission guidance means that charities should have a range of documents and practice and a list is attached below. These will need reviewing in the light of the changes outlined above and particularly to deal with the new rules on conflicts of interest and the changes to the law as a result of the Companies Act 2006. Our charity team regularly prepares and reviews such policies and we would be happy to provide you with an estimate for such work.

To access the basic guide and HMRC’s model declaration please [click here](#)

To access the list of governance policies please [click here](#)

For further information, please contact:

**Andrew Studd**

Partner

020 8394 6414

Andrew.Studd@russell-cooke.co.uk

**James Sinclair Taylor**

Partner

020 8394 6480

James.Taylor@russell-cooke.co.uk

**Sukanya Ransford**

Solicitor

020 8394 6496

Sukanya.Ransford@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice.  
No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.  
© Russell-Cooke LLP.

July 2010