

## PULSE

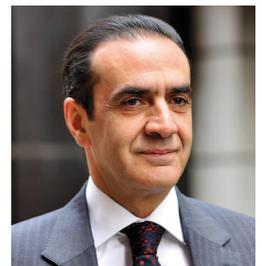
# Quarterly Newsletter of Deloitte's Charities and Not for Profit Group



With the General Election around the corner, the impact of the Lobbying Act is significant to the sector and we have an article on this topic in this issue. There are also articles on Common Investment Funds, VAT and, of course, the SORP and the new SORP Committee where our own Sarah Anderson is a member. She has provided us with an update on the Committee's activities.

Please note that the views expressed in this publication are those of the authors and not of Deloitte. In the complicated environment we all operate, always seek professional advice specifically and don't rely on contents of articles that have been written for general guidance only.

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## Have charities been gagged?

Last year began with the parliamentary debate and controversy surrounding the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill which was rushed through parliament receiving Royal Assent on the 30th January 2014. Known in the media as the 'Lobbying Act' (the Act), its provisions amended the Political Parties, Elections and Referendum Act 2000 (PPERA) and are currently in force as we are within a 'regulated period' which commenced on 19th September 2014 and continues until election day on the 7th May.

### The Lobbying Act

A lot of noise was made on behalf of the sector to challenge the Bill, particularly by umbrella organisations, and much was made of the Act being a deliberate attempt to gag the sector. However, rather than an attempt to gag, the legislation is perhaps simply another example of lazy legislating, indicating that despite assertions about the great importance of the 'Big Society', Westminster does not have either the appetite to listen to, or properly consider how such blanket legislation frustrates the sector from being able to help those most in need.

The 'noise' made on behalf of the sector in opposition to the bill has had an unfortunate side effect: the issue of charities lobbying decision makers has come to the fore of the public consciousness, and the opinion that charities should not engage in lobbying or campaigning activity appears not only to be held by certain high profile public figures, but also by a significant section of the public who are similarly uncomfortable with charities undertaking this type of activity.

### The applicability of PPERA

The Lobbying Act amended PPERA and introduced new restrictions which in reality are only likely to affect a minority of charities. The applicability of PPERA to charities is not new, as charities have long been subject to electoral law and, despite the legislation being awkward and bureaucratic, it is navigable for those charities wishing to use the election period as an opportunity to raise awareness and initiate change in an attempt to improve the lot of their beneficiaries.

Campaigning by charities within the restrictions set in law can be an important tool to further their objects. For example a child safety charity may need to lobby for a change in the law to protect children from injury, or a health charity may have a vested interest in NHS reform, as the introduction of proposed change may have a disastrous or positive effect on the health and well-being of its beneficiaries. If charities cannot utilise their significant front line knowledge and expertise to speak out and inform changes that help their beneficiaries then what does that say about our democracy? Why shouldn't they be able to influence the debate? Campaigning in this way can certainly make a significant impact for the charity's beneficiaries and diverting charitable money to this activity may pound for pound achieve more than the pursuit of more traditional activities.

### Speaking out

The Charity Commission's guidance "Speaking Out: guidance on campaigning and political activity by charities" clearly sets out that such activity must never be party political and in reality charities rarely overstep the mark. During the last general election only a small number of issues had to be investigated by the Charity Commission, none of which were considered to be significant.

The changes in electoral law brought about by the Act, whilst unhelpful in their extent, have not prevented charities from being able to campaign in accordance with charity law. Arguably, a charity undertaking campaigning activity during a regulated period to such an extent that it is required to register with the Electoral Commission is campaigning on such a scale that it is only fair that they be subject to the same rules as other third party campaigners. Organisations are required to register if they want to spend more than £20,000 in England or £10,000 in any of Scotland, Wales and Northern Ireland during a regulated period on regulated campaign activity.

### Registration with the Electoral Commission

There are three tests which need to be passed in order for a charity's expenditure to be regulated campaign activity therefore necessitating the charity to seek registration with the Electoral Commission if the expenditure thresholds are met:

- 1) **the purpose test** – can the expenditure on the campaign be reasonably regarded as intending to influence how people vote?;
- 2) **the activity test** – is the charity undertaking one of the specified types of activity, such as public rallies, publicity, media events or the production of election material?; and
- 3) **the public test** – is the activity (with the exception of certain media events) necessarily public i.e. not simply aimed at the charity's members or committed supporters?

The key changes to PPERA mean that a wider range of activities is now regulated during a regulated period, including canvassing opinions and market research. The expenditure limits (beyond which registration with the Electoral Commission is required) have actually been increased, but there is now a requirement to include staff costs in the calculation of the amount being spent on the campaign in question, which of course creates an additional layer of bureaucracy with which many charities may struggle to cope. Other changes include new "working together rules" to curb anti-avoidance when several organisations group together for a joint campaign, and new reporting requirements, such as the need to report to the Electoral Commission for any donations received in support of a particular campaign.



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Initial uncertainty about how the rules apply to charities have largely been swept away, in part by the informative publications issued by the Electoral Commission and its open door policy when it comes to engaging with the sector.

### Consequences – the present position

We are now in the middle of the current election period. Whilst many charities wishing to campaign in the run up to the election could perhaps have done so without the requirement to register, the uncertainty and new stigma attached to the issue of charities and campaigning and the power held by funders, extensive charity memberships and the need for trustees to be ever mindful of potential risks to their charity's reputation has meant that charities appear to have decided on the whole not to campaign, and that is perhaps a great shame for their charitable causes. At the time of writing this article, only a handful of charities had registered with the Electoral Commission.

The government is keen to rely on the Big Society on one hand, but quickly to dismiss it with the other and perhaps it is now time for the sector to stand up for itself and demonstrate that it is a highly professional and influential sector. Only then may politicians and doubting members of the public realise that modern charity is about a lot more than just knitting, tin rattling and hand outs.

## NURS Funds for Charities

*For some time, there has been industry discussion about whether the existing regulatory regime for charity investments such as common investment funds (CIFs) remains the most suitable approach in today's environment. In 2013, the charities regulator, the Charity Commission, undertook a consultation in relation to the regulation of CIFs. At the same time, new European legislation, the Alternative Investment Fund Managers Directive (AIFMD), has been designed to strengthen the regulation of investments, including charity funds.*

*In this short article, we look at why funds such as Non-UCITS Retail Schemes (NURSs), which are authorised by the Financial Conduct Authority (the financial services regulator), are likely to provide a more up-to-date and robust regulatory framework than CIFs for charities looking to invest.*

### Common Investment Funds

The Charities Act 1960 gave the Charity Commission power to establish CIFs, which are collective investment schemes in which only charities can participate. The Act provides that such a fund is to be treated for all purposes as being a charity.

An important distinction which we believe is often misunderstood by potential investors is that the Charity Commission regulates CIFs as charities and not as investment funds. The Charity Commission appears concerned about this confusion and has stated that its key objective is to re-emphasise that it does not endorse CIFs as an investment product and that the appropriateness of CIFs will be for the trustees of a particular charity to decide.

As far as financial regulation is concerned, CIFs were until recently 'unregulated'. However, now that the new AIFMD legislation is in place, the Financial Conduct Authority ('FCA') provides some financial regulation of 'unregulated' funds through the requirements it places on the investment management companies and authorised corporate directors (corporate bodies and authorised persons given powers and duties under the FCA regulations to operate an open-ended investment company).

The Charity Commission has limited resources, and there has been industry discussion for a while about whether it would be more appropriate for investment funds for charities to be fully regulated by the FCA rather than the Charity Commission. In the past, there have been proposals for a completely new authorised charity fund structure, but to date there has been little progress towards such a framework.



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The Charity Commission's guidance states that "when considering whether to create a CIF, the Commission will firstly consider whether it should more properly be created as an authorised investment fund"<sup>1</sup>. As a result of the Commission's stance, it is likely that in future, many new investment funds for the charity sector will be established as FCA-authorised schemes such as a NURS, and over time CIFs may be seen as relatively outdated investment structures.

### Non-UCITS Retail Schemes

The FCA's regulation of NURS funds provides an established corporate governance framework for authorised funds, including the requirement to notify (and sometimes obtain consent from) investors to changes in the way funds operate, which entails additional investor protections and rights, over and above those inherent in the CIF regime. Some investment managers have, in practice, run CIFs as though they were FCA-authorised schemes, but the NURS structure clearly formalises this approach. In addition, NURS funds are, like CIFs, also subject to AIFMD requirements.

The umbrella structure of a NURS arrangement can allow separate funds which cater for the various requirements of the charity sector – for example, growth, income and ethical considerations – to be brought together. This makes it relatively easy for charities to gain access to a wide range of strategies.

Furthermore, there are currently no significant tax differences (between CIFs and those NURSs which are restricted to charities) at the level of the fund, provided an investor within the fund continues to qualify as a charity. Investments in NURS funds should be treated as an "approved charitable investment" for the purposes of section 558 of the Income Tax Act 2007 and section 511 of the Corporation Tax Act 2010. In addition, investors in a CIF are subject to VAT on the fund's annual management charge; investors in a NURS are not. When compounded over a number of years, this can make a substantial difference to investment returns.

On balance, therefore, the NURS seems to us the most appropriate authorised structure for new charity fund launches, and we have adopted it across our specialist charity fund range.

## The Autumn Statement and VAT

The VAT measures announced in the Autumn Statement had two consistent themes; aligning the VAT position of outsourced service providers to that of central Government to prevent VAT being a discouraging factor to outsourcing, and the benefits that can be achieved from successful lobbying.

The Highways Agency is set to be replaced by a Government-owned company and the announcement that GovCo, along with the London Legacy Development Corporation, will be eligible for VAT refunds from 1 April 2015 is a reminder of the significantly different VAT positions of private and public sector bodies and the need to fully consider the VAT consequences that arise when non-Government companies are established to provide what are presently core Government services. With a greater focus on reducing public spending and a need for more efficiency in the provision of core services, the establishment of Government-owned companies is likely to become more commonplace and the VAT consequences will always be a major factor to address.

HM Treasury has also announced that a review of Government bodies eligible for VAT refunds will be published early next year and has also recognised that changes to the VAT refund scheme (more commonly known as the Contracted Out Services provisions) are required to facilitate the sharing of legal advice across departments. Following the updated guidance on COS Heading 14 earlier this year, it is clear that HM Treasury is recognising the differing nature of services being provided by and across Government departments and is willing, in some cases, to facilitate changes.

Lobbying has resulted in many of the VAT announcements in the Autumn Statement and is becoming an increasingly recognised and often successful means of seeking a change in the VAT position applicable to certain sectors.

The UK hospice sector has lobbied HM Treasury for a number of years, seeking a change in the VAT legislation that prevents it from recovering VAT when it provides healthcare services to the NHS. Where the NHS previously undertook these activities it could recover the VAT as it was fulfilling its statutory duties. The lobbying resulted in Monitor (the sector regulator for health services in England) carrying out its Fair Playing Field Review and the subsequent announcement in the Autumn Statement that the Government will refund the VAT that hospices charities incur. The exact means by which this VAT will be refunded has not yet been announced and it will be interesting to see whether this is by way of increased grant funding to offset the irrecoverable VAT or through the VAT system itself. It is also interesting to note that the refunds will be made to hospice charities and not the private sector. It raises the question of whether lobbying by the private sector would be recognised in the same way as lobbying by the charitable sector. UK search and rescue and air ambulance charities have also successfully lobbied the Government and will now be eligible to claim refunds on VAT incurred in carrying out their non-business activities.



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<sup>1</sup> <https://www.gov.uk/government/publications/common-investment-funds-and-common-deposit-funds/common-investment-funds-questions-and-answers>

## The new SORP committee

In December 2014, the Commission and OSCAR (the joint SORP-making body) announced the membership of the new SORP committee which will serve until 2018. The new committee includes members drawn from accountancy practice, including Sarah Anderson from Deloitte LLP, the charity sector, funders, commentators on the sector, sector umbrella bodies and academia. Its membership spans the four charity law jurisdictions covered by UK-Irish Generally Accepted Accounting Practice and includes representatives from the Republic of Ireland.

### An exciting time

It is an exciting time to join the committee as we consider the impact of changes in small company reporting that take effect in 2016 on GAAP and the charity SORPs. We also look forward to the review of the new GAAP standard FRS 102 in 2017-18 due to changes in International Financial Reporting Standards and developments in GAAP.

A review of the SORP is required at least annually so the committee will also consider this. The outcome of a review is not necessarily a new SORP, the conclusion can be that no change is required, or an information sheet is required to clarify particular issues, or, an Update Bulletin should be published to deal with a limited amendment of the SORP. Currently the committee is working on a response to the recently issued FRED59 and considering the impact on the SORP of the forthcoming withdrawing of the FRSSSE.

### The task in hand

The SORP Committee must identify, consider and address issues relating both to the application of the current SORP and develop recommendations that will assist the sector implement any new accounting standards that have been introduced since the last review.

In addition to the technical aspect of applying prevailing accounting standards and providing a sector specific interpretation of accounting standards, the SORP includes and develops recommendations for trustees' annual reporting. The inclusion of the Trustees' Annual Report within the SORP's remit ensures that narrative reporting enhances the information provided in the accounts, enabling users to better understand the aims, objectives and activities of a charity and its performance and its financial position. This joined up approach ensures a coherent approach to annual reporting and the involvement of the sector in developing the reporting requirements, which are applied to it. Whilst the SORP is not a governance code, it helps to foster good practice in many areas through its reporting recommendations, for example risk management procedures and the development of reserves policies.

### Overall purpose of the Committee:

- contribute to the development, review, updating of the SORP taking full account of prevailing accountancy standards, and all legislative requirements;
- ensure the SORP reflects good sector practice and distinguishes between those matters which are mandatory in the preparation of accounts which are necessary to give a true and fair view and those matters which are considered good practice but which are not mandatory;
- ensure the SORP is effective and distinguishes, as far as is reasonable and appropriate, between different parts of the charity sector;
- contribute to the development of the aim of the FRC of high-quality financial reporting proportionate to the size and complexity of the entity and users' information needs; and
- ensure their workings and deliberations are congruent with the FRC's code of practice for bodies recognised for issuing SORPs.

The role of the Committee is therefore both technical and broad. The Committee needs to understand the breadth of reporting and accounting issues reflected in a multicultural and multi faith UK and Republic of Ireland, in particular any specific issues affecting smaller charities. Committee members need to take a broad view, sharing expertise and insights to ensure the overall success of the SORP. One important role of the committee is therefore to facilitate wide and effective consultation on proposals to ensure the SORP is expressed in a manner that is understandable to preparers of accounts, practitioners, professional advisers, and trustees whilst maintaining technical excellence and accuracy.

### What next

I feel privileged to hold a position on the SORP Committee and to be able to influence the accounting and reporting agenda to maintain public confidence in the work of the sector. I am looking forward to sharing in the committee's activities and receiving your feedback on consultations and the future of the SORP.



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## Background on The Charity Commission and SORP-making bodies

The Charity Commission's job, as the independent regulator of charities in England and Wales, is to ensure that charities are accountable, well run and meet their legal obligations. The Commission is independent of both Ministerial direction and control and of the sector it regulates. It is accountable to Parliament for its performance, efficiency, effectiveness and for the delivery of its over-arching aim of maintaining public trust and confidence in the integrity of charity. The objective is for the Charity Commission to be a pro-active regulator, strategic and outcome-focussed; working in an open way, valuing partnerships, and engaging in dialogue with all stakeholders.

SORP-making bodies are expected to meet criteria laid down by the Financial Reporting Council (FRC) and to develop their SORP in line with their published code of practice. Under the code of practice the Commission and OSCAR, as the joint SORP-making body for charities in the UK, need to demonstrate the sector represented has special accounting or financial reporting issues that require the clarification of accounting standards or interpretation, and the body shares the FRC's aim of high-quality financial reporting proportionate to the size and complexity of the entity and users' information needs.

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