



# Not for Profit eNews

June 2021

**Now, for tomorrow**







# June 2021 eNews



**Welcome to our June edition of eNews.**

In this month's edition, we are revisiting the responsible investment guidance issued by the Charity Commission, a topic we briefly discussed in May's edition of eNews, but this time we will go into more detail. The consultation has now closed, and the Commission is currently analysing the results.

We review the most recent changes made to some of the wording of the Code of Fundraising Practice and how these impact charities who are running lotteries.

HMRC has issued new guidance on claiming Gift Aid on waived refunds and loan repayments. In April 2020 HMRC agreed to introduce a temporary concession to allow waivers of refunds and loans to charities to be treated as donations upon which Gift Aid could be claimed. This concession has now become permanent.

With the easing of some of the Covid rules, community amateur sports clubs may have utilised the outside space to generate more income by serving drinks outside. We provide a recap of the key HMRC CASC rules and we discuss the key tax risks associated with the increase of utilisation of outdoor space for generating income.

Finally, a new trustee recruitment guidance was launched by Reach Volunteering in collaboration with Association of Chairs, Small Charities Coalition and Getting on Board. We provide an overview of the issues the guidance aims to tackle.

Best Regards,

**MHA Not for Profit team**



# Responsible investment guidance issued by the Charity Commission

In the [April edition](#) of our eNews, we mentioned that the Charities Commission issued guidance for [consultation](#) on responsible investment practices for charities. The Charity Commission closed the consultation on 20th May 2021. Views were sought on the clarity of the revised guidance it has published about the approach to investing charity funds. While the Commission analyses the feedback provided, [here is some background to the consultation](#):

## Background

All charities can invest, and for some charities, investments can be a major source of funding.

The Commission are keen to point out that it is the trustees who are responsible for how they invest their charity's assets, not for the Commission to tell trustees what they should do. However, the Commission does provide guidance for trustees to help them understand and comply with the law.

## The issue – was the previous guidance clear?

Trustees have always had the option to make financial investments in ways that align with their charity's purpose (and values). Previously this was known as 'ethical investment', which the Commission have now termed 'responsible investment'.

The examples given by the Commission are;

- **Negative Screening** – avoiding investing in investments which are against the charity's aims (i.e. a health charity investing in products harmful to health)
- **Positive Screening** – choosing to invest in a sector which aligns with the charity's aims (i.e. an environmental charity investing in renewable energy)

The Commission's current [guidance](#) Charities and investment matters: a guide for trustees - 'CC14' – describes the legal framework, duties and discretions that trustees have when investing their charities' funds. The lack of clarity and the reasons given included;

- that some trustees felt they are unable to make responsible investments, because they perceive they have an overriding legal duty to maximise the financial returns when investing, regardless of any other consideration
- that there is insufficient assurance that trustees can decide to take a responsible approach to investment
- a perception that the Commission does not accept that trustees can comply with their duties fully if they adopt a responsible investment approach
- that some felt that the guidance lacks practical advice.

## Revised draft guidance

The Commission have updated their draft guidance – the proposed changes can be found [here](#) with a copy of the revised draft guidance [here](#).



# Charities running lotteries – Code of Fundraising Practice

The Fundraising Regulator sets and maintains fundraising standards across the UK. They ensure that fundraising is legal, open, honest and respectful. The Code of Fundraising Practice (the code) outlines the standards expected of charitable fundraisers across the UK.

## What change to the code is being made and why?

A minor change to the current wording of standard 12.6.2 to reflect more accurately the legislation which underpins the standard on hosting a free draw for charitable fundraising purposes.

Standard 12.6.2 will be amended on two key points to remain in-line with the Gambling Act legislation:

- the inclusion of a letter by ordinary post (either first-class or second-class) as an acceptable free method of entry;
- the revision of the current wording on acceptable selection criteria for the draw.

## Standard 12.6.2 of the code currently states:

To be a free draw the arrangement must either be completely 'free' to enter, as defined in the Gambling Act, or have a free method of entry, which must also be as accessible as and no less convenient than paying to enter. Anyone taking part using the free method must have the same chance of winning as they would if they paid to enter.

## The new wording of standard 12.6.2:

To be a free draw the arrangement must either be completely free to enter or have a free method of entry. This free method of entry must either be a letter sent by ordinary post (first-class or second-class post) or another method of communication that is no more expensive and no less convenient than the paid method. The system for allocating prizes must not distinguish between entries made through the free or the paid method of entry.

Standards in the code where 'must' and 'must not' are in bold text indicate a standard based on a legal requirement (for example, a piece of law or case law).

The change comes into effect from 4 June 2021. Note, that this change to the wording will not require fundraisers to achieve a greater standard than was already set out in the code.

The code for [Lotteries, prize competitions and free draws](#).



## SPOTLIGHT ON

## Going concern and financial sustainability – why all charities need to consider these challenges in 2021

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# HMRC issue new guidance on claiming Gift Aid on waived refunds and loan repayments

## Gift Aid on “payments of money”

In the past, it was not possible to claim Gift Aid on waived refunds and loan repayments unless the charity first repaid the monies to the donor, then the donor re-donated it. This is because usually a donation only qualifies for Gift Aid if it is a gift consisting of a “payment of money” by an individual who has/will pay sufficient UK tax, to a charity and it satisfies all of the following conditions:

- the gift is not subject to a condition as to repayment
- the gift is not a Payroll Giving donation
- the gift is not deductible from income for tax purposes
- the gift is not part of an arrangement for the charity to acquire property from the individual or a connected person
- any benefits associated with the gift are within the statutory limits

In addition, a charity may only make a Gift Aid claim if the following conditions are met:

- the charity must have a Gift Aid declaration made by the donor which covers the donation
- the charity must have evidence that they have explained to the donor the personal tax implications of making a Gift Aid donation - this can be done by including an explanation on the Gift Aid declaration or separately
- there must be an audit trail linking the donation to the donor and their Gift Aid declaration

## New guidance

As a result of the coronavirus pandemic charity funding has been under extreme pressure, so in April 2020 HMRC agreed to introduce a temporary concession to allow waivers of refunds and loans to charities to be treated as donations upon which Gift Aid could be claimed. This concession was aimed at charities that had sold tickets for events that had to be cancelled due to coronavirus.

**HMRC have now confirmed that the April 2020 change is to be made permanent and have issued [guidance](#) on the matter.**

In summary, the guidance states that the waiver will be eligible for Gift Aid provided there is a record of a formal waiver held by the charity and all other Gift Aid rules are met (i.e. the conditions set out above). Information on what is accepted as a formal waiver is set out in the guidance.

We would recommend that the guidance is read in full before making a Gift Aid claim on waived refunds and loans.



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# Community amateur sports clubs (CASCs) and outdoor hospitality

The current UK Covid rules have brought an opportunity for CASCs with a bar and plenty of outside space to earn income by serving drinks outside. With many traditional drinking establishments having limited outside space, this could mean that the club is accepting more social members than normal or is welcoming more non-members. Certainly, when driving past the local cricket club we have noticed a lot more picnic tables and parasols around the clubhouse!

Could your club be at risk of breaking the Community Amateur Sports Club (CASC) rules? Or could your club be exceeding the small trading exemptions for Corporation Tax relief?

It has been some years since the CASC rules have changed, so now might be a good time to undertake a review of your activities to check that you still qualify.

## Recap of the key HMRC CASC rules

In 2015 several changes were made to the CASC scheme. As reminder, set out below are some of the key rules:

- The club must be open to the whole community
- 50% of members must be participating in the sport
- CASCs can earn only income of up to £100k a year from non-member trading and property income (e.g. social membership fees, income from functions, bar sales, catering sales, rental income)
- Players can only be paid a total of £10k over a 12-month accounting period in total
- Restrictions on membership fees

## Key Corporation Tax reliefs available from being a CASC:

- Trading profits if the turnover is less than £50k
- Property income where the income is less than £30k
- Interest received
- Chargeable gains

## Other benefits from being a CASC:

- Claim Gift Aid on qualifying donations
- Mandatory 80% charitable rates relief

### Risk 1

### 50% of the members are not participating in the sport

To be a participating member a person must participate in the sporting activities of the club on at least 12 separate days a year. Participating include volunteering to coach, officiating at games, or acting as a groundsman etc.

**Risk:** If your club has accepted an influx of social members, is the 50% rule still being met?

**Recommendation:** Review your membership lists.

You may need to consider having a "supporters club" separate from the CASC.



## Risk 2 earning non-member trading income of over £50k

Supplies made to members are not normally considered to be trading income. HMRC give the following examples around the sale of food and drink which fall under the member exemption. The sale of:

- food and drink in a cafeteria to members of a multi-sports club as part of their participation in the sporting experience
- such as confectionery and snacks from a tuck shop to members of a gymnastics club as part of their gym session
- drink to members of a club in the bar before, during and after games and training
- food and drink to non-members in the bar after watching a game and being invited in for a drink by a member
- food and drink to visiting players and spectators using the bar after a game when invited to do so by members
- food and drink as part of a social event designed to encourage participation in the sport or to generate more regular sporting participation by club members
- If non-members are just essentially using the club as a bar/restaurant, then the related income would be non-trading.

**Risk:** If total trading income exceeds £50k in an accounting period, the any profits arising on that income would be taxable. Furthermore, if trading income exceeds £100k the club would no longer meet the conditions of being a CASC.

With lockdowns only recently being eased, it is probably unlikely that non-member income from bars, catering, vending machines, function etc. would have already exceeded £100k for your 12-month accounting period. However, at least in the short term, it is likely that many people will want to reduce the risk of Covid by continuing to meet outside (especially as the summer is only around the corner). Therefore, is it possible that you will exceed the £50k within your 12 month accounting period?

**Recommendation:** Forecast your trading income. Difficult to do in these uncertain times, however, it might be obvious from these workings the likelihood of the limit being breached.

If it is likely that the £50k limit will be exceeded, you will need to take action to retain your CASC status. It is possible that setting up a trading subsidiary company, routing trading income through it and gifting profits to the CASC could be the solution.

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## Risk 3 does the CASC need to register for VAT?

The rules for whether a CASC needs to register for VAT are the same as for any other business. In short, if a CASC makes taxable supplies of more than the registration threshold (currently £85k, as at June 2021) it is required to register for VAT.

VAT rules are complex, but income from the following activities are examples of items that would count towards the £85k threshold.

- Social or non-playing membership subscriptions
- Catering, bars, gaming machines and social functions
- Parking
- Sponsorship income

**Risk:** Is increased income from social-memberships and catering/bars pushing the CASC over the VAT registration threshold?

**Recommendation:** Carefully track your income for VAT purposes to ensure that you register for VAT at the appropriate time (unless you have voluntarily registered).

### Conclusion

Covid has changed how the world operates. Now is a good time to review your trading activities and consider whether they may cause you tax issues or an issue with your CASC status. Early action now may mean that steps can be taken to prevent non-compliance or a tax liability.

# Trustee recruitment cycle



A relatively new [website](#) has been developed by Reach Volunteering in collaboration with Association of Chairs, Small Charities Coalition and Getting on Board. The website, called Trustee Recruitment Cycle, supports boards to recruit trustees in an effective and inclusive way.

## Diversity gap:

Charity trustees are the people who share ultimate responsibility for governing a charity. Trustees oversee everything a charity does, from setting its strategy to being responsible for its work and finances. A lot more attention is given to diversity of boards by the media nowadays than ever before. There has been an observable increase in studies and research conducted on the topic of importance of board diversity.

Charity Commission research shows that over **70% of boards still recruit their trustees informally**, using their own networks. This may mean that boards lack diversity. From the results, trustees are more likely to be male (64%), white (92%), of an average age between 60 and 62 years, and more affluent (75% are above the national median).

The Trustee Recruitment Cycle has a purpose of supporting boards to overcome this diversity gap with guidance on the website separated into six distinctive stages which represent the recruitment cycle. The Trustee Recruitment Cycle aims to tackle lack of board diversity by promoting inclusive recruitment and by providing resources in the form of information and guidance on the website for each stage of the trustee recruitment process.

One additional matter that may form a significant part of the recruitment process is competency assessment, especially where the trustee is bringing some specialist expert skills to the board.

Rita Chadha, chief executive at Small Charities Coalition, said: "Recruiting trustees can be a pivotal turning point for a small charity. Getting it right is so important, good trustees can make an organisation, bad trustees break one. This guide from Reach Volunteering is an essential and invaluable tool in making sure not only that the process of recruitment is done well, but also that it envelopes and expands an organisation's commitment to equality. No organisation should even consider recruiting without reference to this guide".



Penny Wilson, chief executive of Getting on Board, said:

**This will help charities recruit the trustees they need to thrive, a key part of which is to build a diverse board which has personal experience of the issues a charity is seeking to tackle".**



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