

**Response to the consultation by the Charity Commission
on revisions to the Annual Return 2023-25**

Thank you for the opportunity to comment on the Charity Commission's proposed revisions to the Annual Return 2023-25. We hope that you will find our comments helpful; we would be happy to discuss them further with you if needed.

Question 1: Do you support the proposal to increase the flexibility of the AR, allowing us to select certain questions not to be run in a given year, using the criteria set out in paragraph 2.5?

In principle, yes, particularly where the purpose is to phase the introduction of certain questions to enable charities to amend their systems or processes to collect the necessary data. However, we would note the following points:

- Firstly, we would question whether the Annual Return is the most appropriate place to capture information for a 'snap-shot' of the sector. Whilst we appreciate that the Annual Return has the advantage of being compulsory and therefore all registered charities (above the relevant income threshold) will be required to provide the relevant information, it is a regulatory filing, and the information it collects should be linked to the Commission's regulatory role. Surely data collected for the purpose of supporting the Commission's policy work should be collected separately with the Annual Return focused on information the Commission needs (and will use) to regulate that specific charity. Further, linking the collection of data on the sector solely to those charities required to file an Annual Return would miss out a significant section of the sector, such as those with income below the Annual Return threshold and exempt or excepted charities.
- It is crucial that charities are notified in advance as to the questions which are going to be asked in future years – as the Commission acknowledges, some questions may require charities to amend their systems to collect the right information to be able to respond to the Annual Return.
- In terms of collating data on a particular risk event, we comment on this further in later responses but at this stage would note that Annual Returns are filed throughout the year, rather than at one specific date; it would therefore make it very difficult to compare data of this nature as charities would be completing the questions at different times – for example, one charity answering questions on the impact of the Covid-19 pandemic now, may have a very different response to another charity answering the question in 12 months. That does not mean to say that the impact was not the same today on both charities.

Question 2: Do the changes we are making on questions about finance ask for the right information about charities based on the information provided?

It is not clear why the Commission is asking for detailed breakdowns by income stream. What does the Commission intend to do with this information? We consider that it is a matter for the trustees to consider whether (a) they are reliant on one source of income and (b) it is appropriate in the circumstances of that charity for them to be so reliant.

At the moment, much (although not all) of the information can be drawn from charity accounts prepared in compliance with the Charities SORP. The information now requested in relation to finances (as well as many other questions in the draft Annual Return) does not align with that required under the Charities SORP. This results in a disproportionate burden on charities, particularly when it is not clear why the Commission is requesting this information.

Question 3: Are the questions on finances worded in a way that makes them clear and easy to understand?

No.

One question asks: Has the charity received a donation(s) exceeding 25% of total income from a single trust in the financial period for this return? It is not clear what sort of trust is intended to be captured here

– is this looking at donations from a private trust or grants from a charitable trust? If the latter, why is a distinction being drawn between grant-making charities formed as trusts and those formed as companies or taking other forms?

Another question asks for a break down of grants to individuals and other charities. We note that charities can also make grants to non-charities, for example social enterprises and overseas charities (which are of course not charities for the purposes of English law). Provided the question will allow charities to include percentages which do not add up to 100%, this does not need amending, but we anticipate that the Commission may wish to adjust the question to deal with the fuller picture.

Question 4: Is our draft supporting information and guidance on the finance questions sufficient to explain how to complete these questions?

See our comments above which are not resolved by the supporting information and guidance.

Question 5: Could you answer these questions using information you already gather on your charities' finances?

N/A

Question 6: Do you have any concerns about the time it would take to answer the questions on trustee payments?

We are concerned generally about the length of time involved to answer the new questions in the Annual Return, but consider that the questions in relation to trustee payments are not unreasonable. That being said, the question is not clear about whether this would capture payments to connected parties? For example, a trustee is a partner in a law firm and the charity pays that law firm for legal advice.

We are concerned about the Commission's proposal to publish this information. Will it be clear when published on the register that it is permissible for charities to pay trustees or connected organisations in certain circumstances? We are concerned that there could be some misunderstanding in relation to arrangements which are permitted.

Question 7: Are the new questions about overseas income and agreements with overseas partners clear, easy to understand and answer (using the supporting information as necessary)?

No. The level of detail requested seems disproportionate. For example, why is the Commission seeking a detailed breakdown of how overseas income was received by the Charity? Does the Commission need such a detailed breakdown on the income received from each source in each overseas jurisdiction? How does the Commission intend to use this information? This is a significant burden for charities operating internationally.

As we have raised before, the question in relation to overseas income types is not clear on how donations from funds held offshore by UK resident individuals should be treated. Perhaps (c) could be amended to be clear that this would be included in that section.

Question 8: Do you have any concerns about the time it would take to answer the questions on the way overseas income was received by your charity?

Our clients have reported concerns that this level of detail is disproportionate and will take a significant amount of time to gather. From our experience, our clients do not routinely collect information with this level of detail and it will take time to collect the information necessary to respond. This seems disproportionate given that it is not clear why the Charity Commission is collecting this information.

Further, we consider that the Commission needs to consider and clarify its position in relation to 'operating overseas'. We have been advised that if a grant-making charity makes a single grant to an overseas charity, it is deemed to be 'operating overseas' and should include the value of the grant in overseas expenditure. The Commission should be much clearer on its policy position in this respect – both in the Annual Return and in the context of registrations. Surely it would be better for the Commission's regulatory activity to draw a distinction between charities which are truly operating overseas (for example, providing services overseas or partnering with overseas organisations to deliver activities) and those charities purely making grants overseas. If the proposed question breaking down grants made to individuals and organisations is to be included, perhaps this would be an opportunity for the Commission to capture data on charities making grants overseas (as opposed to operating overseas in the natural

sense of the word) if the Commission considers that, from a regulatory perspective, it needs to collect that data.

Question 9: Do you think the Commission should gather data on the premises from which a charity operates?

Except in very limited circumstances, it is difficult to see how this would be necessary. The Commission's requirements should be proportionate, both in terms of the impact on an individual charity and the impact on responding charities as a whole. Bear in mind that some charities operate from a very large number of premises, for example, care homes. There should also be clarity for charities whose staff operate from home or rent premises on a short term basis for conferences or workshops. We note also that there are many small charities who do not have dedicated premises and instead meet in their trustees' homes, workplaces or other public meeting places. We recommend that the Commission is clear it does not expect residential addresses to be listed.

Given that many charities provide services virtually, particularly following the pandemic, it is not clear why the premises where they operate from is important, and in particular, why that should be made publicly available if those premises are not open to the public (unlike, for example, an art gallery).

Finally, given that charities can operate in a wide geographic area, collating data on premises would not, for example, give a clear picture of the spread of charitable services (if that is the intention behind the question). Many charities, for example those running telephone helplines, will be based in one geographic areas, but provide support to beneficiaries across the UK.

We note also that in the subsequent new question, the Commission asks whether any of the charity's websites are hosted outside the UK. This seems a disproportionate level of detail to be asking and it is not clear why the Commission is asking this question. If there is a risk associated with websites hosted outside the UK, surely this is better addressed through the Commission's email update or similar.

Question 10: Please comment on how feasible it would be for you to provide information about all the locations from which the charity operates. Please include suggestions for how to implement this if it were included, such as the easiest way in which to provide location information.

Please see above – this would have a disproportionate impact on certain charities and it feels unnecessary for the Commission to collect this information.

Question 11: Do the changes we are making on questions about charity operations and structure ask for the right information about charities based on the information provided?

The questions on structure ask whether a charity is a federated or regional member of another registered charity or affiliated to another registered charity; the focus being on groupings of registered charities. There could be some uncertainty for charities where they are affiliated to or a federated or regional member of a charity which is not registered – for example, because it is exempt, excepted or established overseas.

Further, it would be helpful to understand why the Commission wants to ask for this information specifically.

Question 12: Do you agree that the new questions about charity operations and structure are clear, easy to understand and answer?

No.

In relation to the structure questions, whilst the draft supporting information is helpful and we anticipate that the lead charities in such structures could assist members in identifying the correct response, we would nevertheless query how easy it will be to access the information when completing the Annual Return. Will the online system, for example, enable you to hover over defined terms without having to leave the page?

The questions in relation to members are more problematic.

Firstly, all charities formed as companies, CIOs and unincorporated associations will have members and those members will have rights under company/charity/general law, as well as the charity's governing document. We assume that the Commission is trying to ascertain whether the charity has members who are not also charity trustees – if that is the case, the initial questions should make that clear. In clarifying

that, we would note that some charities will have members who are trustees, but not all of the trustees are members – care should be taken if amending that question to exclude the situation where trustees are members.

Even where a charity's trustees are also its members, the charity may also have supporters who it refers to as 'members' but who do not have rights under the charity's governing document. For those charities, it will be difficult to answer binary questions as the answer to both of the questions will be yes and no.

As you will appreciate, it may be difficult for some charities, particularly small charities, to answer this question without taking advice. This can be a somewhat complex areas involving issues of, for example, company law where some rights exist outside of the charity's governing document per se, particularly under statute.

In any event, it is difficult to see what the Commission hopes to achieve with this information. The Annual Return should be proportionate in terms of the impact on individual charities.

In relation to subsidiaries, the question about subsidiaries which have been dissolved is a supplementary question if the charity has said that it does have trading subsidiaries. Arguably, a charity who has dissolved a subsidiary and is asked 'Do you have any trading subsidiaries?' will respond 'no'; this means that the Commission will only capture information about dissolved subsidiaries if the charity still has active subsidiaries. We would suggest that instead the initial question asks 'Did the charity have any trading subsidiaries during the financial period of this return?'

We note the Commission proposes to publish whether trustees are also directors of the trading subsidiary. Given that it is recommended practice for at least one trustee to also sit on the board of the trading subsidiary, we trust that the Commission will ensure that it is made clear that it is appropriate and recommended for a trustee to sit on the board of a trading subsidiary. This would avoid any misinterpretation that by sitting on the board of a trading subsidiary, the trustee concerned is received an inappropriate private benefit.

Question 13: Is our draft supporting information and guidance for the questions about charity operations and structure, including the glossary, sufficient to explain how to complete these questions?

No. Please see our comments above, in particular in relation to membership.

Question 14: Could you answer these questions using information you currently gather on your operations and structure?

In our experience, charities will generally have the information described in various formats and places, but it would not otherwise be gathered in the sense of already being brought together in a form that can readily be dropped into an annual return without significant further commitment of time.

Question 15: Do the changes we are making on questions about employees and volunteers ask for the right information about charities based on the information provided?

We note that the Commission has yet to confirm whether the total amount spent on payroll during the financial year will be made publicly available. Again, we note the importance of clear messaging that it is appropriate and necessary for charities to spend money on staff. A charity with a high payroll is not necessarily a bad thing – many charities need to employ staff to deliver charitable services, for example carers.

Question 16: Are the new questions about employees and volunteers clear and easy to understand and answer?

See above.

Question 17: Is our draft supporting information and guidance around the questions on employees and volunteers sufficient to explain how to complete these questions?

Please clarify whether the Commission is looking for headcount or full-time equivalent in terms of the number of staff employed. If the latter, please ensure that the form can be completed with decimal points.

Question 18: Could you answer these questions using information you currently gather on your employees and volunteers?

N/A

Question 19: Are the changes we are making to questions about governance of risk, incidents and safeguarding clear and proportionate, and do they ask for the right information?

No.

The Annual Return contains a long list of policies – some of which may not be appropriate for certain charities. It is not clear what the effect is of saying 'no'. Does the Commission expect all charities (even those with no staff or volunteers other than the trustees) to have all of these policies? What is the purpose of including the date of last review? Will charities be criticised if it has been over 12 months since a policy was last reviewed? Whilst we appreciate the importance of making sure that charities adopt policies and regularly refer to them, the Annual Return does not feel an appropriate place for this sort of questioning.

We note there is duplication in relation to financial controls which is included separately, as well as in the list of policies.

Question 20: Is our draft supporting information and guidance on governance of risk, incidents and safeguarding sufficient to explain how to complete these questions?

See above.

Question 21: Could you answer these questions using relevant information you currently collect?

In our experience, it will take a significant amount of time for many of our clients to collate this information.

Question 22: Do you support an additional question being available for use in response to major external change?

In our view the Commission should rely on serious incident reports that are already required to be made to assess the impact of major external events on a specific charity. Even to estimate positive or negative impact in these areas of the myriad events that might affect a charity in a year would involve very significant time and thought, if it is to be done in a meaningful way. As charities must not mislead the Commission, they will need to do that difficult work in order to respond to the Annual Return. Whilst many charities will be considering the impact of external events as part of their risk register and strategic planning, it is highly disproportionate to require all charities to formally consider these points in this specified detail and share the result with the Commission. Further, the position is more nuanced than a simple positive or negative impact which is difficult to represent in the form proposed. As noted above, this is something which would be better addressed by membership and other sector bodies and in some respects duplicates work they already do.

We appreciate the need for the Commission to gain information about the sector, but the Annual Return is not the appropriate place to do so.

Question 23: Do you think the approach to the new Annual Return is proportionate?

Overall, we do not consider the new Annual Return is proportionate.

Whilst it is difficult to point to any single question that is completely unreasonable (aside from perhaps some of the comments noted elsewhere), the problem here is that after the previous expansion of questions there was a huge burden and cost on charities and this is taking the position further still. Large operational charities with professional staff will be able to deal with this, but the Commission is significantly increasing the time and cost burden on so many smaller charities. Our experience from the last time the Annual Return was significantly amended was that even sophisticated charities were having to take legal advice on the interpretation of the questions and the inflexibility of the form meant a number of charities felt they had to write to the Commission in order to clarify their answers. We consider that this would likely be the case again if the proposed revisions are made.

There is a significant increase in the number of questions asked – many of which involve analysis which may not have been done already. This will give rise to a significantly increased burden for all charities, particularly those who are over the threshold but are not sufficiently large to have the infrastructure in place to collate this level of detail – for example, the requirement to provide a breakdown of funds received/spent overseas.

There is an overlap between the Annual Return and the Annual Accounts in some cases, but not all. It would be helpful if the two could be as aligned as possible – most of the answers can no longer be lifted from the Accounts/Annual Report and require charities to do additional work.

It is unclear why the Commission is asking a number of questions and charities need to understand what will happen to their answers – particularly given the Commission is subject to the Freedom of Information Act. As we have mentioned above, the Annual Return is not an appropriate place for the Commission to gather information about the sector generally for policy or other purposes. This is a regulatory filing which should be confined to information the Commission needs to regulate that specific charity; other matters should be dealt with through surveys of the whole sector – including registered, exempt and excepted charities.

Our strong view is that the Commission should, in accordance with its duty under s16(4) Charities Act 2011, think again about this expansion which is disproportionate and should only add additional questions where these are vitally necessary to the Commission's regulatory functions.

Question 24: Do you have any comments on our assessment of the equalities impact?

No.

Question 25: Please provide us with further evidence or information that we can consider in [relation to publicity], particularly any concerns you have around data privacy.

There needs to be clarity on what is being made publicly available and why – as well as the narrative around making those figures publicly available. For example, the Commission needs to be clear that it is perfectly acceptable and appropriate for charities to pay staff and that it is appropriate for those in very senior positions to be paid a salary which is commensurate with their skills and experience.

Further, the Commission needs to be clear as to whether it considers any of this information would not be exempt from disclosure in the event of a FOIA request.

**Withers LLP
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