

In this newsletter, we have outlined the key headline-hitting stories for the third sector over recent months.



Commercial Tie-ups

Commercial tie-ups hit the headlines this month when, on 4 February, the Sun newspaper alleged that the E.ON package, which Age UK endorsed and reportedly earned £6 million per annum for recommending, was not the cheapest tariff on the market. As a result, E.ON was forced to take the package off the market.

A commercial tie-up occurs when a corporate entity partners with a third sector organisation to, for example, provide professional fundraising, produce a product with the charity's endorsement, or donate a percentage of its sales to the partnering charity. Both parties benefit as these activities are intended to increase charity revenue and awareness and the corporate entity benefits from the charity's endorsement in terms of reputation.

However, this practice of partnering with corporate entities is not without its pitfalls. The Charities Commission and the Institute of Fundraising have both issued guidance in relation to commercial tie-ups:

- **Protect the charity's name and reputation.** It is important to understand the value of the charity's name and how to protect it. The use which the corporate entity is entitled to make of the charity's name and reputation should be limited in accordance with the project.
- **Due diligence.** The Institute of Fundraising has provided recommendations of what a charity should look out for when considering a partnership with a corporate entity. Essentially there should be a process of due diligence to ascertain why the corporate entity wants to support the charity. Before engaging in a commercial tie-up, a charity should have an understanding of what the corporate entity aims to gain from the partnership and how those corporate aims affect the charity.
- **Contractual arrangements.** By law the parties are required to enter into a written contract prior to engaging in a commercial tie-up. Contractual arrangements also provide a platform for the parties to set out the way in which they will work together and to cover key aspects of the relationship (e.g. roles and responsibilities, use of the charity's name/logo, use and ownership of copyright, products and events, arrangements for payments and project goals).

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Guidance

The Office of the Scottish Charity Regulator (OSCR) is in the process of updating its Trustee Guidance. Whilst not focused on commercial tie-ups, this is a document we expect the sector to be interested in once released.

Our team of experienced lawyers at MacRoberts advise on all aspects of commercial tie-ups and draft contracts covering those areas of associated risk

The Etherington Review/SCVO report

The Etherington Review and the informal Scottish Council for Voluntary Organisations' (SCVO) report on charitable public fundraising in Scotland were both published on 23 September 2015. The Etherington Review envisages a new regulatory landscape for charities which has been met with criticisms from the third sector. As yet, the changes proposed by the Etherington Review will only affect third sector organisations in England and Wales.

The Scottish Government, assisted by the SCVO, is considering whether or not to adopt the recommendations of the Etherington Review.

The Etherington Review proposes the following changes, all of which will come into effect in England and Wales by the end of 2016:

- The Fundraising Standards Board will be closed.
- A new regulator, the Fundraising Regulator, has already been set up and board members were appointed on 11 February 2016. The regulator will be funded by charities themselves.
- Responsibility for the Code of Fundraising Practice will be transferred from the Institute of Fundraising to the Fundraising Regulator.
- Establishment of the Fundraising Preference Service (FPS), enabling people to opt out of receiving fundraising telephone calls or direct mail.

The third sector in Scotland has been more receptive to the SCVO review than charities south of the border have been to the Etherington Review. This is perhaps due to the fact that the widely criticised FPS does not feature in the SCVO review and due to the inclusive approach the SCVO has taken stating that:

“Charities should lead the design of their own fundraising regulation system, with the associated rules, codes, thresholds and sanctions”.

The SCVO held a conference on 26 November 2015 with leading figures from the third sector in Scotland to get their views on the proposed reforms. At the conference there was an overwhelming belief that public trust and confidence is paramount to the third sector and to any reformation thereof. It was agreed that charity trustees need to take direct responsibility for the fundraising methods which their charity adopts.

Different approaches to designing a new system of funding self-regulation were discussed at the SCVO conference i.e. a UK-wide approach or a Scotland only approach. It was noted that Scotland has the opportunity to design its own system (a system more suitable to operation in Scotland) rather than signing up to the changes proposed by the Etherington Review and that Scotland is viewed by many in the third sector as having a pro-charity atmosphere. Although Scotland has not been immune to the recent fundraising scandals, the majority of these have occurred south of the border, and so the question arises as to whether or not the proposals in the Etherington Review are proportionate for Scotland.

The working group set up by the SCVO aims to produce an options appraisal to be considered in relation to self-regulation of the third sector.



Data Protection

Data protection hit the headlines in 2015 across all sectors with Talk Talk, Ashley Madison and Carphone Warehouse all facing data protection breaches and the ensuing scandal. Going forward in 2016 it already appears that the ICO is set to continue its assault on data protection breaches.

On 7 January 2016 the ICO issued the Alzheimer's Society with an enforcement notice under principle 7 of the Data Protection Act ordering the Society to take action after discovering that volunteers were using personal email addresses to receive and share sensitive information, storing unencrypted data on their home computers and failing to record paper records securely. The ICO found volunteers were not trained in data protection, the charity's policies and procedures were not explained to them and they had little supervision from staff.

We are reminded that staff and volunteers are those most vulnerable to data breaches and that ensuring they have a good understanding of data protection and their obligations is paramount. All staff and volunteers should be made aware of the charity's policies on data protection and be provided with regular data protection training.

Should the ICO decide to investigate your organisation you will be in a far more favourable position if the organisation has in place adequate policies and records of staff training.

MacRoberts' regulatory and compliance team drafts data protection policies and provide data protection audits and training to charities and companies alike.

Regulatory and Legislative

In a bid to improve the way it engages with, monitors and reviews charities, OSCR has called on all charities to sign up to its online services. The regulator revealed that at least 20% of charities were not signed up and they are encouraged to do so over the course of 2016.

OSCR has confirmed that it will publish the annual reports and accounts for charities with income of over £25,000 and for all Scottish Charitable Incorporated Organisations (SCIOs) from 1 April 2016. If this change affects you, now is a good opportunity to take stock of the charity's accounts before their publication.

Aside from the Etherington Review, there are two other legislative changes on the horizon which are relevant to the third sector: the Lobbying Bill and the Community Empowerment Act 2015.

The Lobbying Bill aims to increase transparency of lobbying by introducing a statutory register of paid lobbyists that

meet with MSPs and Ministers. There are concerns in the third sector over the detrimental effects this Bill could have on the presently inclusive and participatory nature of the Scottish Parliament. The SCVO has previously opposed the Bill and is supporting amendments to ensure that diverse views are still encouraged at Parliament.

The Community Empowerment Act 2015 received Royal Assent on 24 July 2015 and should come into full effect by summer 2016. The Act aims to empower community bodies through encouraging the ownership of land and buildings and strengthening their voices in decisions that matter to them. The Act seeks to include communities and the third sector in discussions relating to community planning and community interest e.g. children. The SCVO has welcomed the Act as part of the broader spectrum of changes that are required to support Community Empowerment.

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