Charities & Non-profit newsletter.

August 2024

pem.

Contents.

Claiming Gift Aid online – what information do you need?

Many charities claim Gift Aid online through their HM Revenue & Customs (HMRC) account. This involves submitting a schedule spreadsheet with the claim information which can include up to 1,000 donations on each file. HMRC have recently updated their guidance on the Gift Aid schedule spreadsheet content to remind people that although the claim can include initials and surname, instead of a donor's full name, the Gift Aid declaration still needs the full name included.

Submitting complete information on the spreadsheet will avoid delays in receiving claims or claims being rejected and below is a reminder of what information should be included in different circumstances. It is crucial that the backing information is retained to support the claim, including a valid Gift Aid declaration for each donation.

The information to be added on the spreadsheet is as follows:

- title, using a maximum of 4 characters per line
- first name (or first initial) and last name, using a maximum of 35 characters per line. Double-barrelled names should have a space not a hyphen
- house name or number
- postcode, using capital letters and include a space
- aggregated donations if applicable (total up to £1,000 on one line)
- sponsored events
- donation date, using the format DD/MM/YY or enter the latest date in a series of donations made by the donor
- donation amount, without using £ signs and showing amounts to 2 decimal places, for example 200.00 not £200.

Any fields which are not relevant should be left blank.

Aggregation of donations

Donations can be aggregated where they are £20 or less and within the same accounting period. A general description should be used instead of the names of the donors. The date should be the date of the last donation.

Regular donations made by one person can be shown on one line, added together (if within the same accounting period) with just the date of the most recent donation.

Gift Aid on admissions cannot be claimed on this spreadsheet, but sponsored events can be. Such sponsorship claims do not need individual names and addresses, except for any individual donations over £500, which should be treated as a normal donation, not from a sponsored event. If adding together donations of less than £500 from sponsored events, the name, address and postcode of each participant in the event should be included e.g. the participant's home address, place of work or the address of a school if the participant is a child who has taken part in an event organised by a school.

Correcting past errors

The spreadsheet can also correct any previous errors which resulted in an overclaim. The amount of tax over-claimed should be included in the donation amount and this amount will then be deducted from the overall claim being submitted. If the overpaid amount is more than the current repayment claim then an additional payment will need to be made to HMRC.

Format of claim

The claims must be on a spreadsheet with the suffix ".ods" in order to be compatible with HMRC's system. When they are downloaded the spreadsheet has a named tab at the bottom and this name should not be changed.

Judith Pederzolli
Director, Business Tax

e. jpederzolli@pem.co.uk

VAT on private school fees.

New year liability change

The provision of education in private schools is currently exempt from VAT. However, that is destined to change from 1 January 2025 as the new Labour government follows through with its pre-election promise to impose VAT on private education.

Draft legislation

The Treasury has published draft legislation regarding the removal of the exemption, which naturally enough includes anti-forestalling measures. The draft legislation forms part of a technical consultation for which responses are required by 15 September 2024. The legislative changes will be confirmed following the Budget on 30 October 2024.

Anti-forestalling

The anti-forestalling measures ensure that any advance payments made on or after 29 July 2024 (when the draft legislation was published) will be subject to VAT. Genuine pre-payments before that date will not be taxed.

Exceptions to the exemption

The draft legislation seeks to remove exemption by way of exceptions to VATA 1994 Schedule 9 Group 6 – Education. The exceptions are:-

- the provision of education by a private school, other than a nursery class
- the provision of vocational training by a private school
- the provision of board and lodging closely related to the above

The draft legislation effectively defines a private school as being a school or institution where full-time education is provided for pupils of compulsory school age (or just school age in Scotland) for fees or other consideration.

The scope of the exception extends to the provision of education provided to pupils over the compulsory school age but under 19 by any institution.

Thus, all fee-paying primary private schools, secondary private schools and sixth form colleges will no longer be covered by the scope of the VAT exemption. Non-maintained special schools approved under the Education Act 1996 are excluded from the private school definition and will continue to benefit from exemption. The changes also have no impact on nursery education, state schools and academies.

Education related supplies

As far as supplies relating to the provision of education are concerned, the provision of accommodation is also to be removed from the scope of the exemption in the New Year. Thus, boarding fees will become standard rated with effect from 1 January 2025. Other goods and services such as school meals, transport, books and stationery will remain free of VAT.

Anti-avoidance provisions

To counter the possibility of affected services being contracted out to an eligible body falling within the scope of the exemption, the draft legislation includes anti-avoidance provisions.

Affected transactions will be deemed to be provided by the private school (and, therefore standard rated) if the main purpose of the arrangement was to secure exemption and the eligible body and the private school are either (i) connected persons or (ii) bound by financial, economic or organisational links.

VAT registration

The VAT rate change will mean that private schools that are not already registered for VAT will be required to do so from 1 January 2025. Those unregistered schools that already make some taxable supplies from other activities will be able to register before then if they want.

VAT recovery on costs

A change in VAT liability from exempt to taxable will mean that private schools will be able to recover VAT incurred on related costs after the change.

This could extend to the recovery of VAT on capital costs in recent years through the making of adjustments under the capital goods adjustment scheme. Put briefly, the capital goods adjustment scheme provides for a fair recovery over a 10-year period of any VAT incurred on certain items of capital expenditure (commonly building work) where the positive rated costs exceed £250k (excluding VAT).

It is unlikely that a private school will change from being one that is fully exempt (and not able to recover any VAT on costs) to one that is fully taxable (and able to recover all VAT on costs). Most schools will be partly exempt (and able to recover a proportion of VAT incurred on costs).

Summary

Private schools that are not already registered for VAT will soon need to apply for VAT registration and take appropriate steps to ensure compliance with the accompanying rules This will include having accounting procedures in place that adhere to the Making Tax Digital rules and the implementation of an appropriate method to calculate VAT recovery entitlement on costs as a result of being partly exempt.

In addition, those schools that have received pre-payments for education yet to be provided will need to determine the extent to which such pre-payments can properly be treated as VAT exempt and the knock-on effect to VAT recovery entitlement on costs.

Rob Plumbly
Director, VAT

e. rplumbly@pem.co.uk

Office of the Scottish Charity Regulator (OSCR) report on financial statements.

In July 2024 OSCR reported on their random sampling review of accounts. They highlighted four key areas from their review where they felt that compliance was poor. These areas were the completeness of the trustees report, provision of comparatives, inclusion of a reserves policy and compliance with the governing documents. They also reviewed that level and appropriateness of external scrutiny by an independent examiner or auditor.

Trustees' annual reports

From their sample of 60 reports, representative of the different types of charity operating in Scotland, it was noted that 13% had no trustees' report or a trustees' report that did not comply with requirements sufficiently.

Comparatives

In the sample 10% of charities did not include comparatives. The OSCR report reminds readers that comparative information is important as it allows users of the accounts to understand how the position has changed from year to year and make appropriate comparisons. Comparative information also helps to ensure that opening balance information from the prior year is correctly brought forward into the current year.

Governing documents

The report noted a number of matters arising from trustees not reading or understanding their governing documents. These included:

- having an independent examination when the deed required an audit
- 8% of charities had insufficient trustees
- 3% of charities making remuneration payments contrary to the terms of the governing documents
- charities not describing accurately their legal constitution.

Reserves

The report states that "Reserves are the funds that a charity has which can be spent freely on any of its charitable purposes. All charities need to have a policy which sets out the level of reserves the charity should hold. A good reserves policy can help show donors, funders, and beneficiaries how charity trustees are managing the charity's money."

The review considered whether the charity had a reference to a reserves policy in its accounts and then looked to see if the actual reserves held were stated and if there was a comparison made of the actual reserves held to the reserves policy itself.

Two thirds of the charities sampled had some reference to a reserves policy in their accounts, with a further two stating they were in the process of developing a reserves policy.

The report noted that even where a reserves policy is stated the appropriateness or rationale for that target was not properly explained.

The report contains a checklist for charities however the points highlighted are fairly basic compliance, with the exception perhaps of the development and presentation of a reserves policy which properly reflects the facts and circumstances of the charity.

The importance of the reserves policy is set out in a separate article.

We recommend that trustees review their governing documents and work with their auditors and independent examiners to ensure that their financial statements presented meet the disclosure requirements.

Reserves and resilience.

Having come through the pandemic it is time for charities to again take stock. Maintaining appropriately high levels of reserves has been essential in providing the resilience to ride the wave, but now many charities are struggling to regain their equilibrium in the post pandemic environment with increasing demands for services as the cost of living increases impact charities, beneficiaries and donors.

In these circumstances, it is important that trustees consider carefully their target level of reserves. An 'off the peg' three months or six months is unlikely to be appropriate as the aims and objectives of each charity are individual and so should the reserves policy be.

Why have a reserves policy?

The reserves of a charity can be complicated and it may be difficult for the reader to understand why reserves are held. The chart below shows the variety of reserve funds: restricted funds, where use is determined by the donor; and unrestricted funds, where use is determined by the trustees. The reserves policy is a way in which charities can tell their story and explain to beneficiaries and donors the reasons for their actions. In particular, a reserves policy should explain how the charity's approach supports balance between current and future beneficiaries and fairness in the management of resources.

A reserves policy and target will help explain to donors and funders why the charity holds a particular level of reserves and may help donors and funders to see where funding gaps are and how they can help meet funding requirements.

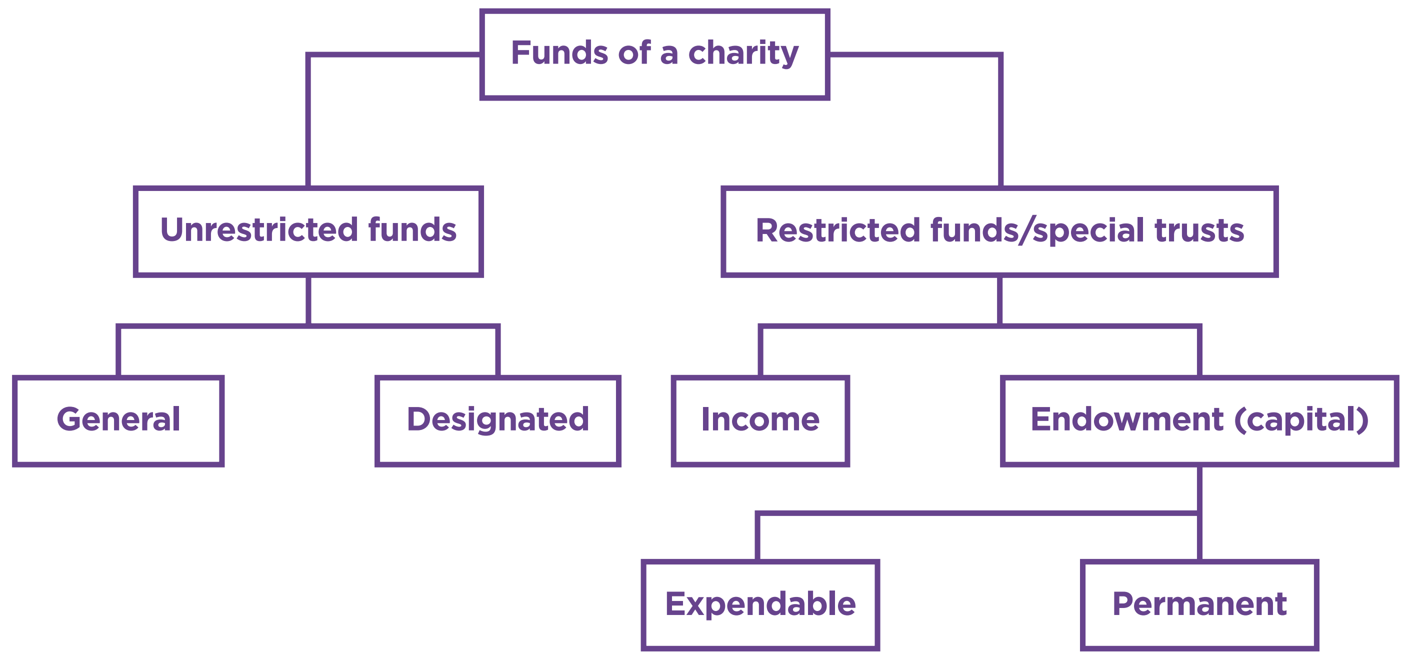
It is important that the reserves policy reflects the operations and strategy of the charity. To support trustees in developing a reserves policy the Charity Commission includes a number of guidelines in their Guidance on Reserves.

Developing a policy

Step 1: Understanding the nature of charitable funds held

The funds held will include restricted funds for grants and projects and may include endowment funds where the capital is being held and only the income can be used. The restrictions on these funds mean that they cannot be used by the charity to react to unusual events and therefore they are not the focus of the reserves policy.

Unrestricted funds are the key to a charity's financial management. Unrestricted funds are those where the donor has placed no restriction on their use or they have been earned by the charity. As illustrated above unrestricted funds can be designated. This is where the trustees of the charity wish to earmark the funds for a specific purpose.



Designated funds are set aside at the discretion of the trustees and therefore can be undesignated and made available in emergency. Charity Commission guidance CC19 makes it clear that designated reserves should only be created for specific purposes and not for general contingency or to manipulate the levels of reserves.

By identifying a need and setting funds aside in a designated fund, trustees can build up the funds needed over a period of time and help manage the financial risk of a project. In this way they spread the burden over several years. When calculating the amount of reserves stated in an annual report, trustees may exclude the amount properly designated from the reserves total. The amount and nature of the designations should be explained in the annual report as should the likely time of their expenditure.

Designations relate to future plans that exist at a point in time. The annual report explains the year end position of a charity and therefore no new designations can be set up retrospectively after the year end to disguise the true level of unrestricted funds held in reserve. Designations which are never used, or the nature of which are frequently changed without funds being spent, risk bringing the charity into disrepute with donors and financial supporters.

Designated reserves are useful for trustees when contemplating a significant spend, for example a new IT system, and wish to set aside money for that project: Planned maintenance cycles or other projects with significant expenditure may form designated reserves.

Step 2: Identifying functional assets

Functional assets can also be separated from general unrestricted funds when setting and managing reserves. This may be done through a designation. Reserves relating to tangible fixed assets and other assets which cannot easily be realised may be set aside, but it is important that this is only for assets which the trustees consider essential in the delivery of the charities aims and objectives. Trustees should be constantly challenging the best use of their resources and setting such assets aside in designated reserves may mean the function and benefit of these assets is not regularly reviewed.

Step 3: Understanding the financial impact of risk

The charities assessment of its principal risks, whilst broader than just financial risk, is likely to identify risk scenarios with a financial impact. Therefore it would be reasonable for trustees to consider these items when developing their policy. Risks around uncertain income or insufficient fundraising to support planned expenditure or beneficiaries may be managed by holding reserves.

Reserves may also be used to manage risks around increases in expenditure and beneficiary needs, which for some charities may arise urgently and unexpectedly. This may be particularly important where charities feel that they cannot also rely on the results of an appeal or other fundraising, or where the payment is likely to be needed in advance of any income receipt.

Step 4: Reviewing sources of income

The assessment of the stability and certainty of future income sources will form an important part of a charity's assessment of risk. The reserves policy should not be set independently of budgets and cashflow forecasts but should be set in relation to uncertainty.

The guidance sets out some of the issues trustees should consider, such as:

- the charity's income is from a single or multiple sources
- the charity is particularly vulnerable should there be a sudden or unforeseen decline in a particular source of income
- the charity relies on a single contract or grant for a significant part of its funding which is subject to tender or review in the near future
- any major donor has indicated a change in their planned giving
- appeals or fundraising activities provide a stable funding source
- certain sources of income are particularly vulnerable to the general economic situation.

Step 5: Impact of future plans and commitments

We have mentioned designated funds above and that they may be used to represent funds which cannot be realised and spent, such as those tied up in functional assets, and also reserves which represent spending plans. Even where funds are not designated, charities should be mindful of their commitments. As well as operational plans these may include commitments to grantees and projects, which whilst not meeting recognition criteria, are expected of the charity should conditions be met by the grantee.

Step 6: Agreeing a reserves policy

The answer, after all these considerations, may be expressed as a number of months expenditure, a period which the charity considers gives 'breathing room' while a response is developed and a strategy built to respond to the unexpected. Or it may be more appropriate to identify an amount which enables the charity to fulfil its immediate obligations and maintain vital support for beneficiaries.

Reviewing reserves against target

Of course, once a reserves policy is set that is not the end of the process. The charity must compare the reserves it holds against the target, and having done that develop a plan to increase or decrease reserves.

Where a charity reports that reserves are greater than the target but exhibits a reluctance to spend, charity trustees may open themselves to challenge. If trustees are indeed unsure, it may been that the reserves target was not appropriately set, and does not really represent sufficient to protect the charity against the risks that they foresee.

Disclosure – a reminder

The Statement of Recommended Practice (SORP) states that all charities should disclose their reserves policy, or explain why they do not need one. For charities with income of over £500,000 the SORP states that the review of the charity's reserves should:

- state the amount of the total funds the charity holds at the end of the reporting period
- identify the amount of any funds which are restricted and not available for general purposes of the charity at the end of the reporting period
- identify and explain any material amounts which have been designated or otherwise committed as at the end of the reporting period
- indicate the likely timing of the expenditure of any material amounts designated or otherwise committed at the end of the reporting period
- identify the amount of any fund that can only be realised by disposing of tangible fixed assets or programme related investments
- state the amount of reserves the charity holds at the end of the reporting period after making allowance for any restricted funds, and the amount of designations, commitments (not provided for as a liability in the accounts) or the carrying amount of functional assets which the charity considers to represent a commitment of the reserves they hold
- compare the amount of reserves with the charity's reserves policy and explain, where relevant, what steps it is taking to bring the amount of reserves it holds into line with the level of reserves identified by the trustees as appropriate given their plans for the future activities of the charity.

We recommend that trustees review and, if necessary, flex their policies annually, a one-size-fits-all approach is hardly ever effective for individual charities and reserves policies should be reflect the story of the charity.

Nikki Loan
Partner, Charities & Non-profit

e. nloan@pem.co.uk

CC48 charity meetings.

This guidance explains:

- ways you can hold meetings, such as face to face, virtual or hybrid
- the types of meeting your charity can hold, such as trustee meetings and annual general meetings (AGM)
- how to make sure your charity's governing document has the rules you need to hold meetings.

This guidance has been updated to make it more accessible and challenges charities to set out a clear framework for online and hybrid meetings.

Charities must make clear:

- who is entitled to attend
- how many people must be present so valid decisions can be taken
- how people at virtual and hybrid meetings can ask questions and join in the debate
- how charities will share and display documents such as resolutions.

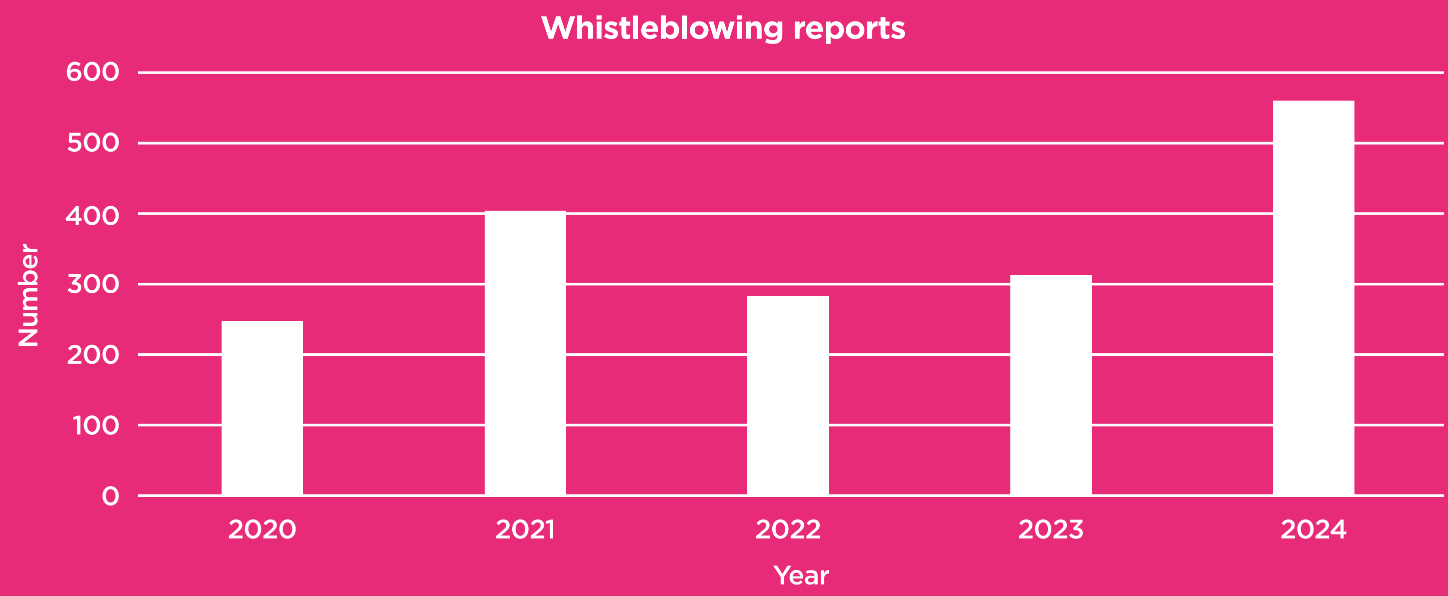
We recommend that trustees review their governing documents and update them where necessary to ensure that trustees can manage their governance in the way they wish.

Whistleblowing reporting.

The number of whistleblowing reports varies year on year.

The figures below taken from the Charity Commission annual report and financial statements show an increasing trend over the years.

Charity Commission guidance encourages employees and volunteers to report things that have happened, are happening or are likely to happen where they might seriously harm: beneficiaries or the services provided; staff or volunteers; assets; or the charity's reputation.



Examples of serious harm include:

- if someone's health or safety is in danger, for example if a charity does not use its safeguarding policy
- a criminal offence, for example theft, fraud or financial mismanagement
- if a charity uses its activities as a platform for extremist views or materials
- loss of charity funds, for example when a charity loses more than 20% of its income or more than £25,000
- if the charity does not meet its legal obligations, for example if someone uses a charity for significant personal advantage.

If the concern is that a crime is being committed then the whistleblower should also inform the police.

The current laws provide protection for employees who are whistleblowers. An employers must not treat an employee unfairly at work if they blow the whistle. The same protections are not currently in place for volunteers and trustees.

In July 2024, the whistleblowing charity Protect reported that it is intervening in an Employment Appeal Tribunal (EAT) and calling for expansion of whistleblowing law to cover charity trustees.

Trustees, who are typically unpaid volunteers, are responsible for the proper governance of charities and have a duty to report wrongdoing when they see it. The case before the EAT will consider whether trustees can claim the protection of whistleblowing law if they suffer as a result of speaking up about wrongdoing.

Sybille Raphael, Legal Director of Whistleblowing charity Protect, is reported on the charity's website as saying:

"Trustees serve an essential and valuable role in ensuring charities comply with the law and operate under strict financial and governance regulations.

As the eyes and ears of a charity, they are key to detecting and deterring wrongdoing such as fraud, safeguarding issues and mismanagement. They need to feel free and able to call out wrongdoing when they see it.

But bringing uncomfortable truths to light is not always welcomed – organisations often become defensive, shooting the messenger rather than addressing the issues raised. This is why the law needs to recognise and protect trustees as whistleblowers. If we want trustees to come forward, we need to ensure that they have a remedy if they suffer for speaking up.

We hope that this case will take a step towards expanding whistleblowing rights to all those in the workplace who need protection."

Trust in charities.

In August the Charity Commission published their annual report assessing the levels of trust in charities. Public trust in charities 2024 - GOV.UK (www.gov.uk).

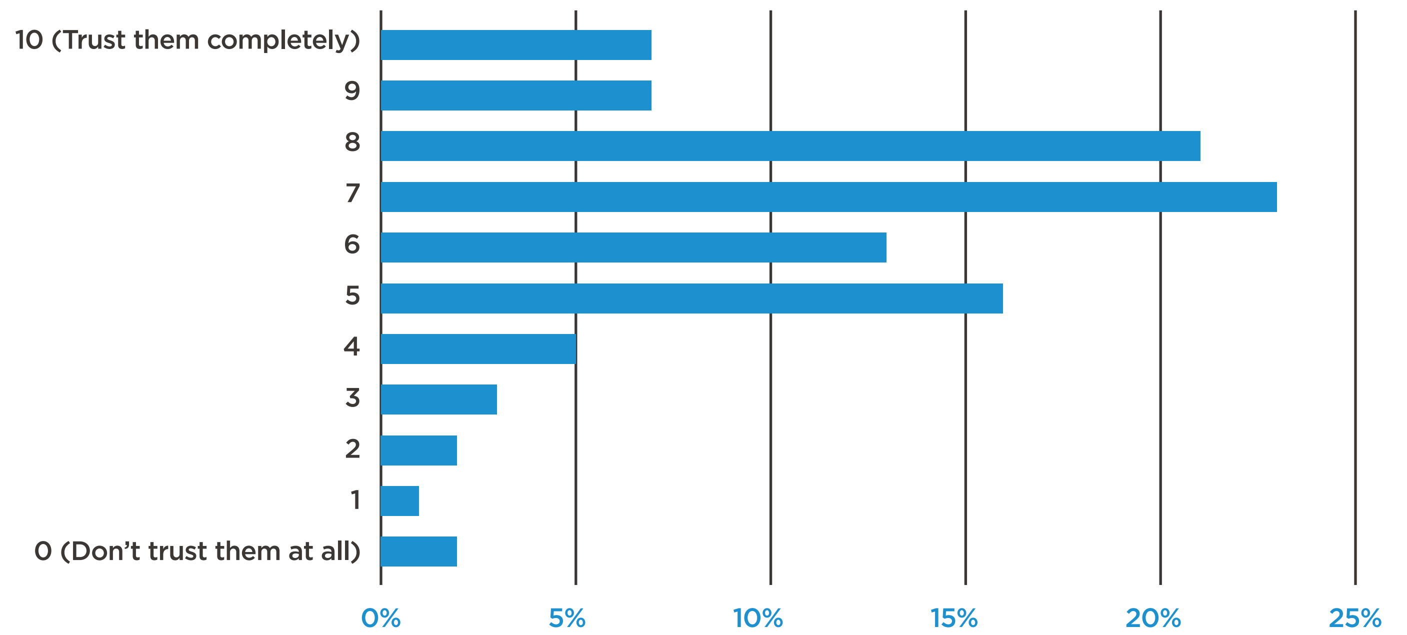
This report has been compiled since 2005 and although there have been some changes in the questions and methodology through that time the report gives a useful benchmark against which to understand the sector and public perception.

The levels of trust based on individual responses are shown below.

The data collected for the report demonstrated that trust in charities differs between different demographics and experiences, it states:

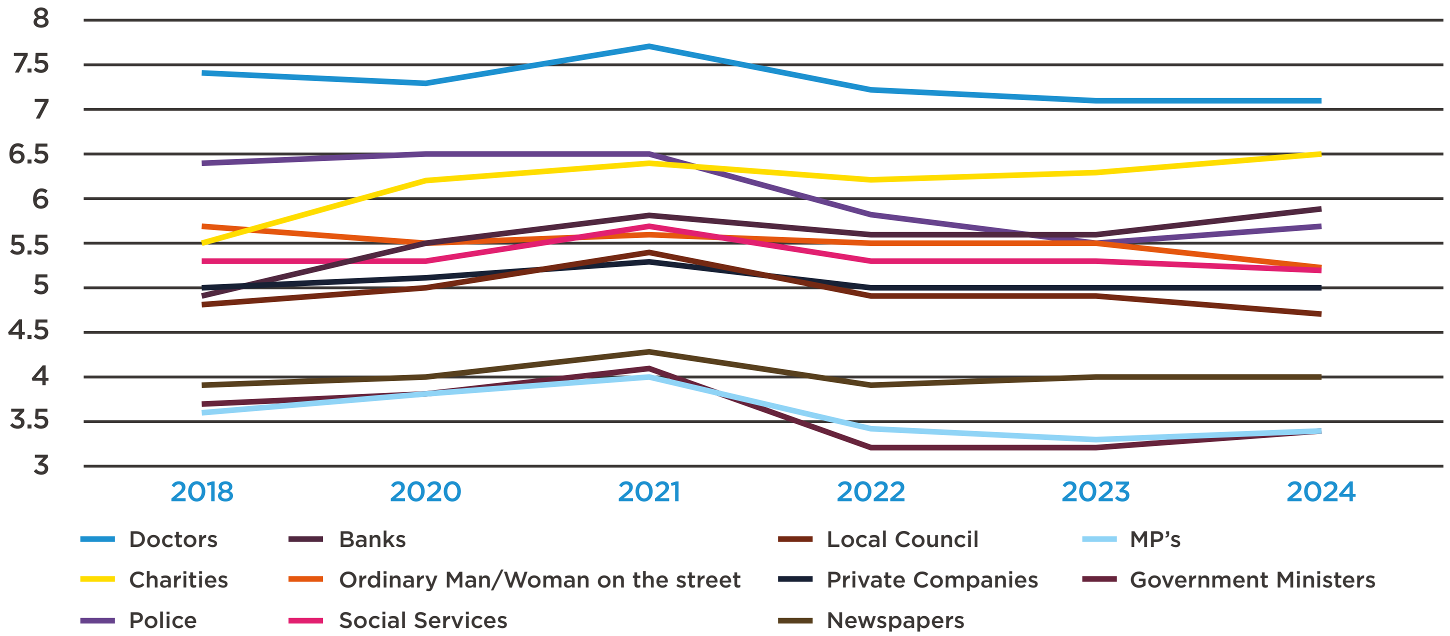
- men are more likely to have low levels of trust in charities (10% vs. 7% of women)
- those educated to degree level or higher are more likely to have high trust in charities (65% vs. 57% educated below degree level and 39% with no qualifications)
- those that have recently seen/heard charities in the news are more likely to have high trust in charities (64% vs. 54% that haven't)
- those that have heard of the Charity Commission are more likely to have high trust in charities (63% vs. 52% that have not heard).

Individual responses



The report shows that trust has been maintained at a fairly stable level and has recovered from the lows which reflected a number of high profile issues around fundraising and safeguarding. In 2018 trust in charities was below that of trust in the ordinary man in the street. This has improved over the last six years so that trust in charities is now only second to doctors.

Who do we trust?



The report highlights some key gaps in public perception. Whilst 87% of respondents consider spending most of the money raised directly on the causes the charity supports to be important only 57% of people actually think that is happening. Similarly the belief that charities are operating ethically is 25% less than the importance based on such behaviour. There is a similar gap, 24%, between the importance of safeguarding and the extent that charities do keep safe, volunteers and people who use their services safe from harm.

The consensus from those questioned was that respondents wanted stories that they could connect with as a way of understanding the work and successes of the charity.

For charities their websites and annual report and financial statements are a window to the activities of the charity. The trustees should consider these expectation gaps when developing their reporting to ensure that the key messages of the charity are clearly set out in an accessible fashion.

The expectation gap

The full report can be found here: [Public trust in charities 2024 - GOV.UK (www.gov.uk)](https://www.gov.uk).

Kelly Bretherick
kbretherick@pem.co.uk

Nikki Loan
nloan@pem.co.uk

Michael Hewett
mhewett@pem.co.uk

Gemma Baratte
gbaratte@pem.co.uk

Judith Pederzolli
jpederzolli@pem.co.uk

Kate Millard
cmillard@pem.co.uk

Robert Plumbly
rplumbly@pem.co.uk

PEM
Salisbury House
Station Road
Cambridge CB1 2LA

t. 01223 728222
e. pem@pem.co.uk

pem.co.uk

KRESTON GLOBAL