
The Charity Law & Practice Review

INDEPENDENT EXAMINATION OF CHARITY ACCOUNTS 2001

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Introduction

In a previous article in this review the writer examined the changes effected in the Statement of Recommended Practice (SORP 2000) in its latest manifestation. Since the publication of *Accounting and Reporting by Charities: Statement of Recommended Practice SORP 2000* and the related guidance "Charities SORP 2000: What has Changed" (CC62), the Commissioners have issued two further publications. These are "Charity Accounts 2001" (CC 61) dated January 2001 and "*Independent Examination of Charity Accounts 2001: Directions and Guidance Notes*" (CC63). The latter was optimistically expected to be available early in 2001, but in the event was issued in August 2001.

This article summarises the effect of *Independent Examination of Charity Accounts 2001: Directions and Guidance Notes* in two parts, the first of which is devoted to an overview and the second of which addresses, albeit in a necessarily summary way, the most important detail contained in the Directions and Guidelines. There are twelve specific directions which the examiner must address in carrying out the examination. Each of these mandatory directions will be outlined with selective cross reference to the accompanying guidance notes. Eight of these apply to all accounts. Four apply only when accounts are prepared on an accruals basis pursuant to the provisions of the Charities Act 1993.²

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² CA 1993, s.42(3).

1 OVERVIEW

Independent Examination

The Charities Act 1993 embodies the concept that some form of independent scrutiny is required for the accounts of all but the smallest charities. It accordingly makes provision for two types of scrutiny: audit and independent examination. Independent examination is a less onerous form of scrutiny than an audit and provides less assurance in terms of the depth of work which is to be carried out and the specification necessary to undertake such work.

The criterion for determining whether independent examination rather than an audit is appropriate is therefore entirely predictable. Size is what counts. Size, in a word, matters. And so does the legal carapace. A distinction is drawn between charitable companies and unincorporated charities.

Consonantly with this distinction only unincorporated charities whose gross income and expenditure is £250,000 or less in the current financial year and in both of the preceding two years, may elect to have an independent examination. But there is a lower threshold too. Unincorporated charities whose gross income and expenditure for the year in question falls below £10,000 are not required to undergo any independent scrutiny.³

On the other hand the independent examination requirements do not apply to charitable companies. A charity which is a company must comply with the accounts scrutiny requirements of the Companies Act 1985. Normally this means that the accounts of a charitable company with more than £250,000 gross income in its current financial year will have to be audited by a registered auditor, and the accounts of a charitable company with income over £90,000 (but not over £250,000) in its current financial year will have to be examined by a reporting accountant. While the figure of £250,000 is the usual threshold between examination and auditing requirements, there are some circumstances where the accounts of a charitable company will have to be audited.

Other External Scrutiny Requirements

An audit obligation may arise due to requirements outside the 1993 Act. For example the charity's governing document may prescribe that there be an audit. Should this impose a higher level of scrutiny than the statutory one, amendment of the governing document may be an option. There may be a requirement under

³ Independent Examination of Charity Accounts 2001, p.3.

another statutory or regulatory regime, as for example those relating to registered social landlords. Or the requirement may have been placed on the charity by a donor or financier.

Trustees may also opt for an audit if they prefer the higher level of assurance that it provides.⁴

Nature of the Examination

An examination involves a review of the accounting records kept by the charity and a comparison of the accounts presented with those records. It also involves a review of the accounts and consideration of any unusual items or disclosures identified. Verification and vouching procedures only become necessary where there are material concerns or doubts arise from procedures or satisfactory explanations cannot be obtained from the trustee body.⁵

But there are limits on what is required of an examiner. The examiner is not required to build up a body of evidence to support a positive opinion on the accounts such as would be required on an audit. Nor is the examiner required to form an opinion as to whether the accounts present a "true and fair view".⁶

Selection of Examiners

An independent examiner is statutorily described as "an independent person who is reasonably believed by the charity trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts".⁷ The constituent elements of this description merit a word or two of exposition.

To be "independent" the examiner should have no connection with the charity trustees which might inhibit the impartial conduct of the examination. The following persons will normally be considered to have a connection sufficient to disqualify them from being independent: (a) the charity trustees or anyone else who is closely involved in the administration of the charity as for example the

⁴ Independent Examination of Charity Accounts 2001, p.3.

⁵ *Ibid*, pp. 3-4.

⁶ *Ibid*, p. 4.

⁷ 7 CA 1993, s.43(3)(a).

Treasurer of the charity (b) a major donor to or major beneficiary of the charity; or (c) a close relative (i.e. relation), spouse, partner, business partner or employee of any person who falls within (a) or (b).⁸

An independent examiner must obviously be competent for the task he has to do and he must be familiar with accounting methods, but he need not be an accountant. People such as bank or building society managers, local authority treasurers or retired accountants would all be suitable as independent examiners.⁹

The quality of evidence of ability which is required will depend on the size and nature of the charity's transactions. Charity trustees should consider taking independent references on the capability of the prospective examiner to carry out this function.¹⁰

The Commissioners strongly recommend that trustees of charities with gross assets in excess of £1million or gross income of more than £100,000 but below the compulsory audit threshold, should select a qualified accountant (or an individual with similar qualifications in charity finance at an appropriate level) to carry out the independent examination. In other cases where accounts are prepared on the accruals basis in accordance with regulations, a commensurate understanding of accountancy principles and accounting standards will still be needed.¹¹

The requisite practical experience of the prospective examiner is a matter for the judgment of the charity trustees. They should satisfy themselves that the candidate has practical experience relevant to the charity in question. Such experience might be by reference to that person having (i) had an involvement in the financial administration of a charity of a similar nature; or (ii) acted successfully as an independent examiner on previous occasions for such charities; or (iii) relevant practical experience in accountancy or commerce.¹²

⁸ Independent Examination of Charity Accounts 2001, Appendix 1.

⁹ *Ibid*, Appendix 1, para 4.1.

¹⁰ *Ibid*, Appendix 1, para 4.2.

¹¹ *Ibid*, Appendix 1, para 4.3.

¹² *Ibid*, Appendix 1, para 5.1.

In their guidance relating to the selection procedures which charity trustees should adopt, the Commissioners recommend that charity trustees should have a full discussion with the prospective examiner about the work of the charity and what the trustees expectations are. They should check and thus ensure that the independent examiner is conversant with the Charity Commissioners' Directions to independent examiners (which are discussed below) and with the nature of the independent examiners report prescribed by relevant regulations made under the Act, and any other relevant regulations and SORP.¹³ The trustees must take all necessary steps to satisfy themselves as to the independence ability and practical experience of the prospective candidate in accordance with the prescribed criteria outlined above. And they must ensure that any written terms of engagement recognise and do not limit the examiner's statutory duties.¹⁴ By following these guidelines and securing suitable assurances from prospective examiners and referees the trustees can be satisfied that they have taken all reasonable and necessary steps in relation to the selection of an independent examiner.

The Examiner's Report

When he has completed his examination the independent examiner must produce a report. His specific reporting duties are set out in the Charities (Accounts and Reports) Regulations 1995 – SI 1995/2724 (“the 1995 Regulations”). Those Regulations have been modified by new Regulations, namely, The Charities (Accounts and Reports) Regulations 2000 – SI 2000/2868 (“the 2000 Regulations”) which ensure that examiners report their compliance with the requirements as to the form and content of accounts prepared under the 2000 Regulations. In his report the examiner must state whether or not any matter has come to his attention in connection with the examination which give him reasonable cause to believe that (a) proper accounting records have not been kept; (b) the accounts do not accord with such records; or (c) the accounts fail to comply with relevant regulations. He is also required to state whether or not any matter has been identified, in connection with the examination, to which attention should be drawn in order to enable that a proper understanding of the accounts should be reached. Details of various other matters where they become apparent are also required to be included in the report. These are:

- (i) material expenditure or action contrary to the trusts of the charity;

¹³ Independent Examination of Charity Accounts 2001, Appendix 1, para 6.1.

¹⁴ *Ibid*, Appendix 1, para 6.2.

- (ii) failure to provide information and explanations to which the examiner is entitled; or
- (iii) evidence that accounts prepared on an accruals basis are materially inconsistent with the trustees' annual report.

The examiner's report must be signed by the examiner in his or her own name. Whilst the name of the partnership or company may be added the appointment of an examiner relates to the individual rather than the partnership or company.

2. DIRECTIONS AND GUIDANCE

Examination and Accounting Thresholds

Every examiner must carry out such specific procedures as are considered necessary to provide a reasonable basis on which to conclude (1) that an independent examination is required under the 1993 Act (2) that the statutory requirement as to an audit does not apply to the charity, and (3) where accounts are prepared under section 42 (3) of the 1993 Act that the charity trustees may properly elect to prepare accounts thereunder.¹⁵

Trustees may elect for independent examination or for the preparation of receipts and payments accounts. For either election to be valid, the charity must be within the relevant income and expenditure bands specified by legislation. The examiner must therefore double check the position. To do so he needs to ascertain the charity's gross income and total expenditure for the financial year concerned, as well as the two previous years; whether the charity's governing document stipulates any form of professional audit; and whether any grant or loan condition demands an audit.¹⁶ Following these procedures at an early stage ought to prevent the work of the examiner being duplicated by professional audit which would add to the expense carried by the charity.¹⁷ Where the relevant threshold level of £250,000 is exceeded the accounts should be referred back to the charity trustees for an auditor to be appointed.¹⁸ Examiners should also familiarise themselves with the various other threshold bands already mentioned and their effect on the accounting procedures for charity. The levels of income

¹⁵ Independent Examination of Charity Accounts 2001, p.6, para 1.1.

¹⁶ *Ibid*, para 1.1.

¹⁷ *Ibid*, para 1.2.

¹⁸ *Ibid*, para 1.3.

and expenditure disclosed by the accounting records and by the trial balance should be considered by the examiner at an early stage of the examination. However, the examiner still needs to remain alert to any additional information coming to his attention during the course of the examination which indicates that an income or expenditure threshold has been crossed.¹⁹ Details of the method of calculating the level of income or expenditure is contained in Appendix 3 to the Directions and Guidance Notes.

Understanding Charity

The examiner is mandatorily directed to obtain an understanding of a whole range of essential details concerning the charity and its operations. These details comprise the charity's constitution, its organisation, accounting systems, activities and the nature of its assets, its liabilities, and its incoming resources all of which will enable him to plan the specific examination procedures appropriate to the charity.²⁰ To achieve this end the examiner will normally take the following steps.

First, he will consider the governing document of the charity focusing in particular on the charity's objects, powers and obligations. He will have discussions with the trustees and, where appropriate, with the charity's staff in order to ascertain the structure, methods and means by which the charity seeks to achieve its objects. Similarly, he will discuss with the trustees and if necessary the staff, the affairs and activities of the charity in order to get an insight into any special circumstances and problems affecting the charity. He will also need to review the minutes of the trustees' meetings to ascertain details of major events, plans, decisions and changes to the trustee body. Finally, he will need to obtain details of the accounting records maintained and methods of recording financial transactions adopted by the charity.²¹

Documentation: Duties Regarding Working Papers

A fundamental obligation (underpinned by the Third Direction) relates to the working papers used in preparing the conclusions of the examiner's report.²² As

¹⁹ *Ibid*, para 1.4.

²⁰ Independent Examination of Charity Accounts 2001, p.7, para 2.

²¹ *Ibid*, para 2.1.

²² *Ibid*, p.8, para 3.

expressed in the Direction itself this is the duty to record the examination procedures carried out and any matters which are important to support conclusions reached or statement provided in the examiner's report.

The working papers should provide details of the work undertaken, support any conclusions reached and record any judgmental matters which may arise. They should as a rule be retained for six years from the end of the financial year to which they relate.²³

Some examples of such working papers are given. They include the letter of engagement from the independent examiner and the terms of its written acceptance to which are added relevant information extracted or obtained from the governing document, minutes of trustees' meetings and a record of discussions with the charity's trustees and staff. Details will also be needed of procedures carried out during the examination, with conclusions reached and of any areas of concern identified and how those areas of concern have been resolved and any verification procedures used. If accounting items have been aggregated for accounts disclosure purposes schedules showing the breakdown of such items should be retained as working papers. So should copies of any trial balance, accounts and trustees' annual report and copies of any written assurances obtained from the trustees confirming amounts included in the accounts.²⁴

Comparison with Accounting Records

The examiner must compare the accounts of the charity with the charity's underlying accounting records and this must be done in sufficient detail to provide a reasonable basis on which to decide whether the accounts are in accordance with such accounting records. If the accounts are prepared on an accruals basis, all balances in the accounts will need to be compared with the trial balance or any nominal ledger maintained. If the accounts are prepared on the receipts and payments basis a direct comparison with the cash records of the charity should be carried out if no nominal ledger is kept.

Test checks will also be necessary of the posting of entries from books of prime entry²⁵ to any nominal ledger and/or to trial balance. Similar checks are also

²³ *Ibid*, para 3.1.

²⁴ Independent Examination of Charity Accounts 2001, para 3.1.

²⁵ For example petty cash book, any sales or purchase ledgers or day books. A review of bank reconciliations, payroll summaries and control accounts prepared will provide a useful check as to the completeness of posting from books of prime entry: Independent Examination of Charity Accounts 2001, para 4.3.

necessary even where accounting records are maintained by using computer accounting packages.²⁶

There is however no requirement for accounting entries to be checked against source documents such as invoices, supplier statements, purchase orders and so forth though the position will be different if concerns arise during the course of the examination and those concerns cannot be resolved without seeking further explanations by reference to source documents.²⁷ Special provision is made for those occasions where the examiner prepares accounts for the trustees.²⁸

Accounting Records

Charity trustees are under a statutory duty to maintain the accounting records.²⁹ Accordingly the examiner is required to review the accounting records with a view to identifying any material failure on the part of the trustees to maintain the records in accordance with their statutory obligation. All the same, the review procedures are not aimed at identifying the occasional omission or insignificant error, but at any gross failure to maintain records in a manner consistent with statutory requirements.³⁰

The guidance on this direction contains the reminder that accounting records should be well organised and capable of ready retrieval and analysis. The records may take a number of forms, for example book form, loose leaf binder or computer records.³¹ But whatever the form the accounting records should be up to date, and readily available; and they should provide the basic information from which the financial position can be established not only at the year end but also on any selected date.³² The accounting records should contain details of all money

²⁶ Independent Examination of Charity Accounts 2001, para 4.2.

²⁷ *Ibid*, para 4.4.

²⁸ *Ibid*, para 4.5.

²⁹ See CA 1993, s.41(3).

³⁰ Independent Examination of Charity Accounts 2001, paras 5.2-5.3.

³¹ *Ibid*, para 5.4.

³² *Ibid*, para 5.5.

received and expended, the date, and the nature of the receipt or expenditure and details of assets and liabilities.³³ Smaller charities may not maintain formal ledgers to record assets and liabilities, and in such instances the requirements can generally be met by maintaining files for unpaid invoices and amounts receivable. A record of fixed assets is generally necessary to meet the accounting requirements.³⁴

Analytical Procedures

The Sixth Direction is of major importance dealing as it does with the following up of "concerns". It lays on the examiner the duty to carry out analytical procedures to identify unusual items or disclosures in the accounts. Where concerns arise from these analytical procedures the examiner must seek explanation from the charity trustees. If, after following up such procedures, the examiner has reason to believe that in any respect the accounts may be materially mis-stated then additional procedures, including verification of the asset, liability, incoming resource or application must be carried out.³⁵

The guide to this Direction stresses the importance of the examiner looking carefully at the final accounts to see if they reveal any unusual items, unexpected fluctuations, or inconsistencies with other financial information. This procedure is called analytical review.³⁶ Half a dozen steps are identified as normal in such a review. Two of these involve comparisons, the rest involve questions which need to be considered. The comparisons to be carried out are (1) comparing the accounts with those for comparable prior periods and (2) comparing the accounts with any budgets or forecasts. The examiner should then consider (i) whether the incoming resources and the application of those resources are consistent with known fund-raising sources, payroll details, activities, and the objectives of the charity³⁷ (ii) whether the liabilities and current assets disclosed are consistent with the scale and type of activities undertaken (iii) whether fixed assets investments are producing income consistent with the assets held and (iv) whether the tangible

³³ *Ibid*, para 5.6.

³⁴ *Ibid*, para 5.7.

³⁵ *Ibid*, para 6 (Direction).

³⁶ *Ibid*, para 6.1.

³⁷ It is important to have obtained a proper understanding of the nature of the charity's activities and affairs for this aspect of the review to be successful.

fixed assets are consistent with the scale and type of activities undertaken by the charity.³⁸

Where analytical review procedures identify any unusual items, unexpected fluctuations or inconsistency, then explanations should be sought from the charity trustees or, where appropriate, the charity's staff.³⁹ Should these explanations prove unsatisfactory to the examiner then additional procedures will be necessary. The guidance notes posit various possibilities in terms of inspection verification certification and checking. Thus physical inspection of a tangible fixed asset may be necessary. It may be that verification of title to an asset may be required or perhaps inspection of third party documentary evidence (such as an invoice contract or agreement) to verify an expense or liability or to confirm an amount of income received or receivable. Again it may be necessary to call for third party certification of a bank balance, or other asset held including the custody of investment certificates. Another possibility is the need to check a post year end receipt or payment to confirm recoverability of a debt or the amount of a liability.⁴⁰

On many matters of course it will be necessary for the examiner to exercise his judgment and draw on his experience.

Form and Content of Accounts

As already indicated four directions deal with accounts prepared on an accruals basis. The first of these reminds the examiner of his duties to familiarise himself with the relevant set of Regulations and SORP. This is Direction 7 which reminds him also of the existence of two specialised accounts packs namely *Accruals Accounts Pack 2001* (CC65) and *Receipts and Payments Accounts Pack 2001* (CC 64).⁴¹

³⁸ Independent Examination of Charity Accounts 2001, para 6.1.

³⁹ *Ibid*, para 6.2.

⁴⁰ *Ibid*, para 6.3.

⁴¹ *Ibid*, paras 7.1-7.5.

Accounting Policies, Estimates and Judgements in Connection with Accrual Basis Accounts

As the guidance notes make clear the accounting policies adopted for accounts on an accruals basis and any estimates or judgments made in preparing the accounts may have a material effect on both the financial activities and state of affairs disclosed by the accounts. Such matters therefore required careful consideration by the examiner.⁴²

Accordingly the examiner was directed to review the accounting policies adopted and to consider their conformity with fundamental accounting concepts the consistency of their application and their appropriateness to the activities of the charity. The examiner was also directed to consider and review any significant estimate or judgment that had been made in preparing the accounts on an accruals basis.⁴³

The examiner should, according to the guidance notes, be satisfied in such a case that accounts are prepared on a basis consistent with the going concern assumption⁴⁴ and accruals concept⁴⁵ and that the accounting policies adopted and applied are appropriate to the activities of the charity and to ensure a relevant, reliable, comparable and understandable accounts presentation.⁴⁶ Whether the accounts are produced under the 1995 Regulations or the 2000 Regulations the examiner will have to consider whether the values at which assets and liabilities are recorded in the accounts are determined by the methods and principles set out in the relevant SORP (1995 or 2000 as the case may be). So too he must consider

⁴² Independent Examination of Accounts 2001, para 8.1. As to the accruals basis see footnote 24 below.

⁴³ *Ibid*, para 8 (Direction).

⁴⁴ The concept requires the charity to prepare accounts on the basis that it will continue in operational existence for the foreseeable future: Appendix 5. But that assumption cannot be made where the charity has actually ceased operational activities, is being wound up or liquidated or the trustees have no realistic alternative but to wind up, liquidate or cease its operational activities: *ibid*.

⁴⁵ This concept, which is central to the recognition of balance sheet assets and liabilities, requires the effects of transactions and other events to be reflected so far as possible, in the accounts for the period in which they occur and not, for example, in which any cash settlement is made: Appendix 5.

⁴⁶ Independent Examination of Charity Accounts 2001, para 8.2.

whether the relevant accounting policies adopted conform with the relevant SORP.⁴⁷

Equally the examiner must consider the reasonableness of any estimates or judgments where they are material to the accounts. Matters that may require consideration include transfers to and from designated fund accounts, valuations of gifts in kind, valuations of fixed assets investments where no market prices exist and estimates resulting from transactions not being fully recorded in the accounting records.⁴⁸ Where applicable the allocation of costs as between the various expenditure categories of the Statement of Financial Activities may also need to be considered.⁴⁹ If accounts are prepared on the receipts and payments basis the only fundamental accounting concept will be that of consistency.⁵⁰

Events Subsequent to the Year End of Accounts Prepared on An Accruals Basis

Where accounts are prepared on an accruals basis the examiner must enquire of the charity trustees as to material events subsequent to the year end of the accounts examined which may require adjustment or disclosure in the accounts. Such an event may have a material effect on both the financial activities and state of affairs disclosed by the accounts.⁵¹ Any such subsequent event should therefore be discussed with the trustees or, if appropriate, with the charity's staff. Any effects on the accounts under review should be considered. Matters which should be discussed include (i) whether any income anticipated and accrued into the accounts at the year end has proved irrecoverable; (ii) discovery of an error or fraud; (iii) crystallisation of a tax liability; (iv) repayment of a grant or donation received; (v) a valuation of a property indicating a permanent diminution in value.⁵²

⁴⁷ *Ibid*, paras 8.3-8.4.

⁴⁸ *Ibid*, para 8.5.

⁴⁹ *Ibid*.

⁵⁰ For the recommendations here see, *ibid* para 8.6.

⁵¹ Independent Examination of Charity Accounts 2001, para 9.1.

⁵² *Ibid*, para 9.2.

Where an event occurring subsequent to the year end affects the amount or disclosure of an amount in the accounts this should be brought to the attention of the charity trustees with a view to the accounts being amended.⁵³

If accounts are prepared on a receipts and payments basis⁵⁴ there is no requirement to consider events subsequent to the year end, unless the examination procedures have given rise to concerns which need to be addressed in this way.⁵⁵

Trustees' Annual Report and Accounts Prepared on An Accruals Basis

Trustees preparing accounts on an accruals basis⁵⁶ must compare the accounts to any financial references in the trustees' annual report (if any) identifying any major inconsistencies and they must also consider the significance such matters will have on a proper and accurate understanding of the charity's accounts.⁵⁷

The trustees' annual report provides a report of the charity's activities during the financial year. The 1995 Regulations or, as the case may be, the 2000 Regulations specify the information that is to be contained in such reports.⁵⁸ Independent examiners should therefore adopt procedures that are directed at identifying inconsistencies with the accounts which are misleading or which contradict the financial information contained in the accounts.⁵⁹ Any inconsistencies identified having a significant effect on the proper understanding of the accounts should be drawn to the attention of the charity trustees. If no appropriate amendment is made to the annual report then details of the matter should be provided in the examiner's report.⁶⁰

⁵³ *Ibid*, para 9.3.

⁵⁴ See CA 1993, s.42(3).

⁵⁵ Independent Examination of Accounts 2001, para 9.4.

⁵⁶ Under CA 1993, s.42(1).

⁵⁷ Independent Examination of Charity Accounts 2001, para 10 (Direction).

⁵⁸ *Ibid*, para 10.1.

⁵⁹ Independent Examination of Accounts, 2001, para 10.2.

⁶⁰ *Ibid*, para 10.3.

If accounts are prepared on the receipts and payments basis⁶¹ there is no requirement placed on the examiner to consider the trustees' annual report. The examiner may, nevertheless, find the annual report a useful guide to the activities of the charity.⁶²

Examiner's Report

The fundamental part of the penultimate direction is that the examiner must review and assess all conclusions drawn from the evidence obtained from the examination and consider the implications on the report to be made under Regulation 7 of the 1995 Regulations. There is a duty to give a clear explanation of any relevant matter and of its financial effects on the account presented.⁶³ Other details about presentation are given in the guidance notes.

Reports to the Charity Commissioners

The examiner must inform the Charity Commissioners in writing if, whilst acting in the capacity of the examiner of a charity, information or evidence is obtained which gives the examiner reasonable cause to believe that any one or more of the charity trustees has been responsible for the deliberate or reckless misconduct in the administration of the charity. A reporting requirement would not arise through mere inadvertence or error of judgement on the part of a trustee whilst endeavouring honestly to carry out trustee duties. It is also unlikely that a reporting duty will arise unless a material loss or misapplication of funds has resulted or could result.

The duty to report relates to information or evidence obtained from the examiner's work undertaking in fulfilling the Commissioner's Directions or whilst acting in the capacity of the examiner of a charity. It is not intended that the examiner should report on small or insignificant matters, particularly where such matters have been satisfactorily resolved internally.⁶⁴

⁶¹ Under CA 1993, s.42(3).

⁶² Independent Examination of Charities Accounts 2001, para 10.4.

⁶³ *Ibid*, para 11 (Direction). For guidance on the details, see paras 11.1-11.9.

⁶⁴ *Ibid*, para 12.2.

The reporting duty relates primarily to the actions of the charity trustees. But, in considering individual actions, the examiner must take into account the trustees' overall responsibilities of management and control.⁶⁵ Where a reporting duty arises the examiner should report the matter in writing to the "Reporting Officer" at the office of the Charity Commission that normally deals with the charity.⁶⁶ The contents of the report should follow the prescribed requirements as set out in the guidance notes to the Direction.⁶⁷

Matters which give rise to a reporting duty primarily concern the improper use of charity assets which has resulted, or could result, from the deliberate or reckless misconduct of one or more of the charity trustees in the administration of the charity.

Examples of such misconduct are: (1) where a deliberate abuse of charity assets by one or more of the charity trustees has come to the examiner's attention, for example, evidence of false accounting by any charity trustee; evidence of theft or misappropriation by any charity trustee and evidence giving rise to doubts as to the honesty or integrity of any charity trustee; (2) a breach of legislative requirements or an act contrary to the trusts of the charity if taken or sanctioned deliberately or recklessly by a charity trustee with the charity suffering or being likely to suffer a material loss or misapplication of its assets; (3) where there has been a gross neglect of the trustees' duties of control and management of the charity's affairs resulting in a material loss of charity assets that has arisen from deliberate or reckless misconduct by the charity trustees. Factors that will require consideration include a failure of the trustee body to meet or consider issues affecting the charity; a gross failure on the part of the trustee body to keep accounting records and any evidence of indifference or recklessness on the part of a charity trustee or the trustee body.⁶⁸

⁶⁵ *Ibid*, para 12.3.

⁶⁶ Independent Examination of Charity Accounts 2001, para 12.4.

⁶⁷ *Ibid*, para 12.4.

⁶⁸ *Ibid*, Appendix 4 paras 1 – 3.