



# Consultation on updating the framework for independent examiners

## Analysis of consultation responses

### Directions for independent examination and related guidance including proposals to extend independent examination to consolidated accounts

#### Introduction

Thank you to everyone who participated in this consultation. We were pleased with the very useful feedback which we received. It has helped us make the new Directions for independent examination and to further develop the accompanying guidance for independent examiners ('examiners') for publication.

On 3 June 2016 we published a consultation seeking views on draft new Directions for independent examination and the draft version of the publication Independent Examination of charity accounts: Directions and guidance for examiners (CC32). The consultation ran for 17 weeks and closed on 30 September 2016.

We received a total of 27 responses, 7 used the electronic reply form and 20 by email. Not every respondent chose to answer every question with the one respondent, noted below as 'other', answering none of them. The number of responses does not fully reflect the level of engagement, as several were from professional accountancy bodies, umbrella charities and other organisations responding on behalf of their membership. Also a Working Party on Independent Examination with practitioner and funder representation assisted pre and post consultation with the development of the guidance.

<b>Respondent category</b>	<b>Number</b>
Accounting firm/ practitioner umbrella body	6
Charity/ charity trustee	7
Funder	-
Independent Examiner	8
Professional body	5
Other	1
<b>Total responses:</b>	<b>27</b>

In the following sections of this document you can find:

- A short summary of the revisions to the Directions and guidance made as a result of the consultation
- A note of the main points that were raised in responses to each question
- A summary of other issues and themes raised by responders

## **1. Changes to the Commission's Directions and guidance for independent examination**

The revised Directions took into account the balance between extending the role of the examiner and the potential increase in the regulatory burden on charities and the implications for the role of the examiner and the need to maintain public trust and confidence in charities. The thoughtful and detailed feedback to the consultation proved extremely helpful in settling the final Directions and guidance and finding the balance between updating the independent examination framework and the potential burden and costs of change.

Responding to the feedback there is now a closer alignment of two of the new Directions with the role of the trustees in overseeing or preparing a charity's accounts. The changes made to those two Directions were:

- Dropping from the new Direction 7 consideration of conflicts of interest and how these were managed by the trustees. The feedback was that this went beyond the role of the examiner in checking the accounts and so the requirement is now limited to the consideration of the disclosure of related party transactions where accruals accounts are prepared.
- Refocussing the new Direction 9 on the role of the trustees in considering the financial circumstances of the charity at the time the accounts are prepared in place of asking the examiner to consider the trustees' assumptions concerning the financial sustainability of the charity.

Responders offered a number of ideas for improving and the main changes we made were:

- The guidance was made less prescriptive by changing some of it from being 'should' to a 'recommended' responding to feedback that prescription hinders examiners exercising their judgment in deciding how best to undertake their examination
- The expectation that the trustees would have approved the accounts prior to the examination is dropped recognising that most examiners considered this impractical and they often work with trustees to improve the accounts during their examination.
- Adding new guidance on the independent examination of consolidated (group) accounts for the first time
- Including new guidance setting out when the examiner can provide other services to the charity and still carry out their examination (with the proviso that the examiner adheres to published ethical standards)
- Dropping the expectation that examiners will be knowledgeable about the whole range of the Commission's guidance and publications when reporting relevant matters to the Commission
- Adding an appendix with an extract of the Regulations to meet the needs of those professional examiners who wish to develop their own report formats

- Adding guidance on fund accounting to help those examiners carrying out the examination of receipts and payments accounts who would be unfamiliar with the SORP's guidance on fund accounting
- Publication of a standard checklist to assist examiners carry out their examinations.

## 2. Responses to consultation questions

Q.1 Do you agree that the proposed Directions are phrased in a way which is clearer to understand and follow? If you answered no, please explain how the phrasing of the Directions can be improved.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	2	4
Charity/ charity trustee	4	2
Independent Examiner	7	1
Professional body	3	2
<b>Total responses:</b>	<b>16</b>	<b>9</b>

Although the majority of responders considered the guidance to be an improvement in style and content, a number of very useful recommendations were made to improve it.

Q.2 Do you agree that the 3 additional Directions are appropriate? If you answered no, please explain how the phrasing of the Directions can be improved.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	3	2
Charity/ charity trustee	3	1
Independent Examiner	5	-
Professional body	2	2
<b>Total responses:</b>	<b>13</b>	<b>5</b>

Although the majority of responders supported the updating of the framework and the three new Directions, there were significant concerns about new Directions 7 and 9 and the potential regulatory burden on examiners and charities that could be involved if these were implemented without change. There was also a concern that aspects of the new Direction 9 in considering financial sustainability of a charity went beyond the skills and experience that could be expected of majority of examiners.

Q.3 In reviewing the other Directions, do you agree that they are improvement over the existing Directions and what changes (if any) would you recommend? Please give your reasons why.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	3	1
Charity/ charity trustee	4	-
Independent Examiner	5	-
Professional body	2	2
<b>Total responses:</b>	<b>14</b>	<b>3</b>

Across all types of responder the new style of guidance and phrasing of the Directions was supported. The responses showed that the aims of simplifying the language and making the Directions and guidance clearer to understand and follow were broadly achieved.

Q.4 Do you agree with the contents of the guidance which follows each of the Directions and what changes to the guidance (if any) should be made and why? Please give your reasons in support of your suggestions.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	-	1
Charity/ charity trustee	5	1
Independent Examiner	5	2
Professional body	-	4
<b>Total responses:</b>	<b>10</b>	<b>8</b>

The responders were divided as to the contents of the guidance with significant changes sought by the professional bodies representing their membership. The chief concern was that the guidance was too prescriptive due to the definition of 'should' as expected practice. This had the effect of effectively mandating the guidance and removing professional judgment and discretion. This concern has been taken on board with elements of the new guidance being rephrased as simply 'recommended' with a greater emphasis put on the examiner using their own judgement and exercising their own discretion.

Also a number of responders offered detailed comments on aspects of the guidance and these improvements were considered in settling the final text. Changes made included:

- Making it clearer when examiners can provide additional services
- Dropping the expectation that the trustees will have approved the accounts prior to the start of the examination
- Making it clearer when the examiner can make changes to the accounting records
- Including a reference to the examiner not giving an opinion as to whether the accounts prepared are 'true and fair' in the example examiner's reports

Q.5 Do you agree that the example independent examiner's reports are an improvement and what changes (if any) would you suggest? Please give your reasons in support of your suggestions.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	4	1
Charity/ charity trustee	5	-
Independent Examiner	6	-
Professional body	4	-
<b>Total responses:</b>	<b>19</b>	<b>1</b>

The new style examiner reports which are intended to make it easier for the trustees to understand what the examiner is reporting upon and what concerns they may have about the accounts were supported.

Q.6 Do you agree that the example independent examiner's reports meet all the legal requirements and what changes (if any) are needed? Please give your reasons in support of your suggestions and state which regulatory requirement(s) are not being met.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	-	-
Charity/ charity trustee	6	-
Independent Examiner	5	-
Professional body	2	1
<b>Total responses:</b>	<b>13</b>	<b>1</b>

Responders did not identify any shortcomings in the new style examiner's reports. The example reports were subsequently checked by the Commission's legal team, the Charity Commission for Northern Ireland and the Office of the Scottish Charity Regulator and any necessary changes made.

Q.7 Is the guidance in appendix 7 for each of the listed matters of material significance helpful, and how might it be improved? Please provide reasons for your answer.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	4	-
Charity/ charity trustee	5	-
Independent Examiner	5	-
Professional body	-	-
<b>Total responses:</b>	<b>14</b>	<b>-</b>

The revised section on the examiner's duty to report matters of material significance to the Commission was welcomed. A suggestion to set out the guidance in money laundering regulations and the framework for reporting to the National Crime Agency was not taken up. This framework only applies to those examiners charging a fee the affected examiners should already be aware of their obligations.

Q.8 Is the new section on reporting relevant matters to the Commission helpful and if you answered no, how can it be improved? Please provide reasons for your answer.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	4	-
Charity/ charity trustee	3	2
Independent Examiner	3	1
Professional body	1	-
<b>Total responses:</b>	<b>11</b>	<b>3</b>

The new section on the examiner's discretion to report relevant matters to the Commission was also welcomed. However the suggestion that the examiner consider what was relevant by reference to the Commission's whole range of publications and guidance was considered impractical. The new section has been amended to provide high level guidance and now cross refers to a separate publication issued by the UK charity regulators which includes examples of the reporting of relevant matters.

Q.9 Do you agree that the Directions and guidance for independent examination should be extended to consolidated accounts. Please give your reasons why.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	5	1
Charity/ charity trustee	5	-
Independent Examiner	3	1
Professional body	2	-
<b>Total responses:</b>	<b>15</b>	<b>2</b>

The responders supported the guidance being extended to cover the circumstances of the trustees voluntarily preparing consolidated (group) accounts and wanting an independent examination of those accounts rather than an audit.

Q.10 Do you agree that if the Directions and guidance are extended to consolidated accounts that the only modifications are those listed and if you answered no, what further modifications are required? Please give reasons for your answer.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	3	3
Charity/ charity trustee	1	-
Independent Examiner	2	1
Professional body	-	-
<b>Total responses:</b>	<b>6</b>	<b>4</b>

Although responders broadly supported extending the framework to group accounts the proposal to offer additional detail in support of each Direction was not as well received. In response the Working Party on Independent Examination was reconvened following the consultation to consider the content of the guidance for the independent examination of group accounts.

Q.11 Do you agree that the proposed changes to Directions and guidance to independent examination will not give rise to significant additional burdens on examiners and trustees and if you answered no, what are the additional burdens? Please give reasons for your answer and if you have identified significant additional burdens, please express them in terms of the additional time to be spent and/or additional items of cost that will be incurred.

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	1	5
Charity/ charity trustee	1	4
Independent Examiner	3	3
Professional body	1	3
<b>Total responses:</b>	<b>6</b>	<b>15</b>

The responders across all types considered that there would be a very significant increase in the regulatory burden on both examiners and charities if the new Directions with particular reference to the new Directions 7 and 9 were implemented without change.

The Commission's Board considered this feedback very carefully at its meeting in March 2017 when the setting the new Directions. Responders had supported the updating of the framework and the three new Directions and so there was support for extending the requirements on the examiner but significant changes were made to Directions 7 and 9 to address the concerns raised responders to the consultation.

In particular:

- Dropping from the new Direction 7 consideration of conflicts of interest and how these were managed by the trustees. The feedback was that this went beyond the role of the examiner in checking the accounts and so the requirement is now limited to the consideration of the disclosure of related party transactions where accruals accounts are prepared.
- Refocussing the new Direction 9 on the role of the trustees in considering the financial circumstances of the charity at the time the accounts are prepared in place of asking the examiner to consider the trustees' assumptions concerning the financial sustainability of the charity.

Q.12 Do you have any other comments on the exposure draft Independent examination of charity accounts: Directions and guidance for examiners (CC32)? If so, please state the part of the exposure Draft you are considering and set out your comments with supporting reasons as to why a change is needed.

A range of valuable detailed drafting comments were offered. The substantive points areas covered were:

- permitting trustees to sign the accounts after corrections are made and not before as the draft guidance specifies;
- detailed suggestions to improve the draft Directions;
- detailed suggestions for improving the accompanying guidance; and
- improvements to the illustrative examiner’s reports.

Q.13 The new Directions are intended to take effect for reporting periods (financial years) ending on or after 31 March 2017. Do you agree that this effective date is reasonable and if you answered no, what alternate date would you suggest and why?

<b>Respondent category</b>	<b>Agree</b>	<b>Disagree</b>
Accounting firm/ practitioner umbrella body	3	3
Charity/ charity trustee	4	1
Independent Examiner	3	2
Professional body	3	1
<b>Total responses:</b>	<b>13</b>	<b>7</b>

At the time of the consultation it was anticipated that the new Directions and guidance would be published in early 2017 allowing up to allow three months for Examiners to familiarise themselves with the guidance. The majority of responders agreed that a three month lead in time was sufficient.

### 3. Other issues and themes raised by responders

<b>Matter</b>	<b>Issued raised</b>	<b>Commission's response</b>
Tiered independent examination	Having one framework of examination for non-qualified examiners and a more demanding framework for qualified examiners.	Neither the Charities Act 2011 nor the Charities (Accounts and Reports) Regulations 2008 provide for a different format of examination depending upon the skills of the person carrying it out. Instead the onus is on the examiner reflecting on whether they have the necessary skills. The settled guidance includes an appendix intended to help the examiner do this. The Charities Act 2011 and Regulations do require certain qualifications if the examination is of a charity with an income of more than £250,000 in recognition that greater skills are required to undertake the examination.
No differentiation by type of accounts prepared	Having all Directions equally applicable in all circumstances would be a simplification.	The 2008 Regulations place an additional requirement on the examiners of accounts prepared on an accruals basis. The differences between receipts and payments and accrual accounts need to be considered in the format of the examination as there is greater content to accruals accounts and the applicable SORP applies to accruals accounts.

<b>Matter</b>	<b>Issued raised</b>	<b>Commission's response</b>
Inclusion of a limitation of liability paragraph (also known as a 'Bannerman paragraph')	To include the statement commonly found in audit opinions that: 'to the fullest extent permitted by law, I do not accept or assume responsibility to anyone other than the charity and the charity's trustees as a body, for my work, for this report, or for the opinions I have formed'.	The 2008 Regulations specify what the examiner must include in their report and those Regulations make no reference to limitation of liability. The examiner can always make such a statement separately from their report. The Commission also notes practice of seeking to limit liability drew comment in the report of the Public Administration and Constitutional Affairs Committee- the collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall. In particular finding 98 which was critical of the approach taken by the professional firms involved and their approach to limiting risk.
Changing the thresholds for independent examination	Whether to ease the regulatory burden by raising the minimum threshold from £25,000	The setting of thresholds is not within the Commission's powers and is a matter for Ministers and the UK Parliament.
Having a common definition of small charity across all UK charity law jurisdictions	The minimum threshold for external scrutiny is not the same and neither is the audit threshold. Standardised thresholds would simplify the framework of external scrutiny across the UK	The setting of thresholds is not within the Commission's powers and is a matter for Ministers and the UK Parliament, and the devolved administrations.

<b>Matter</b>	<b>Issued raised</b>	<b>Commission's response</b>
Requiring all examiners to be professionally qualified	To raise the standards of examination and in recognising the greater demands the draft Directions and guidance place on the examiner	The Charities Act 2011 and 2008 Regulations do require certain qualifications if the examination is of a charity with an income of more than £250,000 but otherwise the intention is that below that level any skilled person can undertake an examination.