Response to: The Red Tape Challenge – Civil Society (Cabinet Office)

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The Charities Aid Foundation

1. Introduction

1.1 The Charities Aid Foundation (CAF) is a registered charity that helps other charities and social enterprises make the most of their money. CAF provides financial, investment and fundraising services and works directly with tens of thousands of charitable organisations across the UK and internationally.

1.2 We also provide social finance through our social investment fund, CAF Venturesome. CAF Venturesome has a 10 year track record of providing capital (debt and equity) to charities, social enterprises and community groups. Since 2002, it has provided over £26m of capital to 300 organisations.

1.3 CAF provides services and support to thousands of individual donors, enabling them to give tax-effectively to charitable organisations across the UK and around the world.

1.4 We also work directly with around 75% of the FTSE 100 companies, providing practical and advisory services to support and facilitate effective corporate community investment. CAF operates the largest payroll giving agency in the UK, ‘Give As You Earn’.

1.5 CAF has a strong history of campaigning for changes in policy and legislation in order to improve the giving environment and to secure supportive legal, fiscal and regulatory conditions for donors, charities and social enterprises. Our knowledge and understanding - gained through direct experience and research - makes us a trusted voice on giving and the effective use of charitable funds.
2. Giving Time and Money

2.1 The need to modernise and simplify Gift Aid and Payroll Giving

Both payroll giving and Gift Aid are well established and important tax-effective giving mechanisms in the UK. Payroll giving was introduced in 1987 and Gift Aid followed in 1990. Gift Aid, in particular, has developed considerably over the past 20 years and has been ‘stretched’ in response to innovation and lobbying by the fundraising community (for example, Gift Aid can now be applied to goods donated to charity shops). This has led to the creation of substantial detailed rules and guidance designed to rightly combat fraud and maintain the integrity of the relief.

2.1.1 The Gift Aid system has now become excessively complex and unwieldy, placing a considerable administrative and bureaucratic burden on charities (and indeed HMRC), preventing organisations from gaining and using resources for maximum social impact. The structure of Payroll giving is also unnecessarily complicated and the disparity between how the two systems operate (particularly the lack of consistency in benefit rules) creates additional barriers for fundraisers and donors.

2.1.2 Gift Aid and Payroll Giving have also failed to keep pace with technological developments and remain predominantly paper-based systems. Both schemes are in urgent need of modernisation - harnessing technology to simplify the systems and ensure that they are fit for the future of digit giving.

2.1.3 Successive governments have demonstrated commitment to maintaining these important tax relief schemes. Since 2010, the Government has made a number of announcements regarding improvements to Gift Aid. These have included raising the limit on Gift Aid benefits in the 2011 budget (something that CAF had called for in evidence submitted to the Red Tape Taskforce), updating guidance, moving the Gift Aid reclaim system online by 2013, simplifying the scheme for goods donated to charity shops and the introduction of the Gift Aid Small Donations Scheme. The Government has also repeatedly stated its commitment to increasing the take-up of Payroll Giving and has recently asked Payroll Giving Agencies to submit proposals for reform of the system.

2.1.4 While CAF welcomes the measures undertaken by the Government to date, we believe that there is more that needs to be done to maximise the take-up of these important tax-effective giving schemes and to reduce the administrative burden for charities.

2.2 The Gift Aid Small Donations Scheme and the Small Donations Bill

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1 For example, in 2008 the Government carried out an extensive consultation with the sector about the barriers to Gift Aid, which led to a package of measures intended to ease some of the burdens faced by charities and, in 2010, HM Treasury led a Gift Aid Forum with the aim of identifying the best direction for reform.


The Small Donations Bill will allow charities and Community Amateur Sports Clubs (CASCs) to claim Gift Aid-like payments on donations of £20 or less without having to collect a donor declaration, up to a maximum donation level of £5,000 every year. This effectively constitutes a ‘grant’ of up to £1,250 per year for each eligible organisation.

2.2.1 CAF supports the stated policy objective behind this scheme: ‘to allow charities and CASCs to claim a Gift Aid style payment on donations received in circumstances where it is difficult to collect donors’ details, or where donors may be reluctant to give them’. However we have, together with the Charity Finance Group (CFG) and the National Council for Voluntary Organisations (NCVO), raised concerns about the complexity of the proposed legislation and the planned implementation of the scheme. We believe that many small charities will not be able to take advantage of the GASDS scheme in its current form.

2.2.2 The main issues of concern include the requirement for charities to have a track record of claiming Gift Aid (having made claims in at least three of the last seven years) and the stipulation that ‘the total Gift Aid donations must be at least 50% of the amount of the small donations on which top-up payments are claimed.’ These requirements may exclude many small charities: if they rely on small cash donations then it is probable that they will not have previously registered for Gift Aid or, if they have, they might struggle to claim anywhere near as much through Gift Aid as they would like to claim through the Small Donations scheme.

2.2.3 We are also concerned about the proposed rules around ‘connected charities’: HMRC feels that there is a problem arising from the fact that some charities are organised as single entities operating in multiple areas, whereas others are organised as individual but affiliated organisations. The issue is deciding whether the £5,000 maximum applies to each individual organisation or only to the parent. HMRC’s view is that it will only apply to the parent. They have also stipulated the circumstances in which a collection of individual charities will count as ‘connected’, and thus will only be eligible for a single £5,000 limit. One suspects that applying this criterion will prove to be quite difficult to implement in practice.

2.2.4 There is an additional clause in the Small Donations Bill stating that a charity is eligible for a further £5,000 of small donations (on top of the core £5,000) if it ‘runs charitable activities at meetings in a local community building’. The definition of ‘community building’ is a ‘building (such as a village hall, town hall or place of worship), or those parts of it, to which the public or a section of the public have access at some or all times, but does not include a building, or any parts of it, used wholly or mainly for commercial or residential purposes’. This rules out many perfectly valid types of organisations that one would have thought should be at the heart of this new policy. Hospices, for instance, would appear to be ruled out of getting the additional £5,000 allowance on the basis that their services are residential.

2.2.5 The proposed scheme also states that ‘the community building amount, in relation to a community building means the sum of the small donations that are made to the charity in the community building in the tax year while it is running charitable activities in the building’. It is unclear here whether the implication is that only small donations raised at the same time as charitable activities are being run (i.e. during the course of them) are eligible. If this is the case, it is difficult to think of many situations in which it would be appropriate to solicit donations from the very people that you are working with in the course of your charitable activities. The only obvious example is church collections.
2.2.6 We believe that the Gift Aid Small Donations Scheme and the connected Small Donations Bill must be simplified if this initiative is to meet its policy objectives and avoid creating additional ‘red tape’ for charities. Our consultation response includes further details and recommendations for improvements to the scheme.

2.3 An online, universal Gift Aid declaration
Currently donors have to fill in a Gift Aid declaration for each charity that they donate to. This involves the individual providing their name, address and (optional) signature. As people increasingly live and give online and on the move, the necessity to fill out separate forms often inhibits people from maximising the value of their donation through Gift Aid.

2.3.1 Charities are required to store these (usually paper) declarations and to keep records for several years. Many small charities literally keep shoe boxes full of forms. CAF itself has a warehouse to store these declarations.

2.3.2 CAF believes that the administration of Gift Aid is clearly outdated and that the scheme must be modernised; harnessing technology to ensure that Gift Aid works smoothly for donors however they chose to give and reducing the administrative burden for charities.

2.3.3 We believe that the Government should make the necessary legislative or regulatory changes to allow a single, universal Gift Aid declaration. This would enable individuals to sign up online to allow donations to all eligible charities to benefit from Gift Aid. Universal Gift Aid declarations (uGADs) would be stored centrally and donors would be able to manage and update their details. Donors would be given a unique identifier (possibly their mobile phone number) which the charity could use to verify that a current uGAD was held and substantiate their claim. HMRC would be able to audit the system as appropriate (rather than the records of individual charities) to check that valid records were held.

2.3.4 CAF believes that this simple solution would dramatically reduce the administrative challenges and barriers connected to engaging donors and could transform the way that Gift Aid is integrated into online, mobile, text and other forms of fundraising.

2.4 Gift Aid rules for admissions
The Government introduced new, more restrictive rules around visitor attractions claiming Gift Aid on admissions to visitor attractions in April 2006. This means that that payment for admission can only be Gift Aided if the donation gives the right for either annual admission or if the donation is 10% or more than the usual ticket price. Previously visitors had a choice of paying an entry fee or making a donation allowing entry.

2.4.1 A 2007 report by Tourism South East suggests that the impact of these provisions was a reduction in Gift Aid claimed on donations for such admissions of 2.8%. The new rules seemed
to have had little impact on overall take up of Gift Aid but have greatly added to the administrative burden of the charities concerned and the length of time taken to process visitor admissions. With popular charities, such as The Eden Project, the additional administrative resources required have been considerable. For other charities, the complexities of the rules have prohibited them from claiming Gift Aid at all.

2.4.2 CAF recommends that the legislation is amended within the relevant sections 420/421 of the Income Tax Act (ITA 2007), so that the position reverts to pre 2005 rules whereby donations can be made for the right of admission to charity property without any restrictions. Please see our submission to the Red Tape Taskforce for full details of proposed amended clauses to the legislation.  

2.5 Benefits provided by ‘third party’ charities

HMRC interpretation of the current legislation means that in order for a benefit to be allowable or exempt for Gift Aid purposes, it must be provided by the charity that receives the donation direct from the donor.

2.5.1 This, therefore, means that when a donor gives to a grant receiving charity which in turn makes a donation to a third party charity, the end beneficiary charity is unable to provide any benefits to the original donor without making the donation ineligible for Gift Aid. This appears to be an unintended consequence of the legislation which impacts on many charities receiving donations through intermediary organisations.

2.5.2 CAF proposes that s416 of the Income Tax (Earnings and Pensions) Act, (ITEPA), is amended at subsection (7) to cover benefits provided by both the recipient charity and third party charities. Please see our submission to the Red Tape Taskforce for full details of proposed amended clauses to the legislation.  

2.6 Harmonising benefit rules between Gift Aid and Payroll Giving

Under the current legislation, as set out in the Income Tax Earnings and Pensions Act (ITEPA) there are no allowable benefits for donations under payroll giving. HMRC appear to recognise that this is problematic as, by concession, (as published in their detailed guidance) they ignore very small tokens of recognition, such as cheap pin badges and ‘newsletters’.

2.6.1 This restriction has, however, led to charities that wish to offer membership or provide other benefits, that would be allowed under Gift Aid, to have to refuse donations through payroll giving.

2.6.2 CAF proposes that the legislation in relation to payroll giving is amended to add a clause (d) to s714 of the ITEPA. Please see our submission to the Red Tape Taskforce for full details of proposed amended clauses to the legislation.  

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7 Ibid p10

8 Ibid p11
3. Social Investment
There is no single agreed definition of what social investment is. However, it seems clear that it at least encompasses the use of non-grant finance to support charities and social enterprises. There is already a vibrant market for social investment in the UK, and indications that this market has the potential to grow significantly over the coming years. However, there are existing legal and regulatory barriers that are stifling its development.

3.1 Collective investment schemes
If money from different sources is pooled together in order to fund charities on anything other than a donation basis (i.e. where there is the possibility of some financial return) it becomes subject to FSA rules on Collective Investment Schemes. For organisations looking to open up social investment opportunities to external investors this presents a real barrier. The cost of ensuring compliance with FSA rules, in terms of legal advice, reporting etc is prohibitive.

3.1.1 An example of where this issues has arisen is with CAF’s Social Impact Fund (SIF). This is a fund that allows existing CAF Trust Account holders to invest £10K or more, which is then used to make loans to charities through our social investment arm, CAF Venturesome. When these loans are repaid, the money is repaid to the CAF Trust account holders (minus fees for running costs), who are then free to reinvest the money in the fund or use it to make straightforward charitable donations. This is fine under existing regulation, because the money held in CAF trusts has already passed the charitable threshold and is technically owned by CAF (but directed by individual account holders). The investments in the Social Impact Fund are therefore- in a sense-program related investments by CAF.

3.1.2 CAF has looked at opening up the fund to non-CAF trust clients, but doing so would mean taking money from different sources that had not already passed the charitable threshold. This would require a new collective investment scheme structure, which would be extremely costly to set up and run. This means that it is not viable to extend the CAF SIF to non-CAF clients as things stand.

3.1.3 CAF has in the past called for an exemption to the rules on Collective Investment Schemes laid down by the Financial Services and Markets Act (FSMA)2000 for monies raised and held solely for charitable purposes. We now believe that the introduction of a broader requirement on the financial regulator to consider social investment-specific issues through an amendment to the proposed Financial Services Bill could also solve the problem. That way the regulator would be empowered to deal with this issue, and other social investment issues that occur now and in the future.

3.2 Social Investment requirement on financial regulators
Existing financial services regulation presents a barrier to the development of social investment. The central problem is that the FSA is not able to take into account the social motivations and goals of investors as well as their financial ones. Social investors may well be willing to accept lower financial returns or higher financial risks than mainstream investors, in exchange for social returns. If the regulator cannot recognise this distinction, it is impossible to assess issues of risk tolerance and consumer protection accurately.

3.2.1 An amendment has been proposed to the draft Financial Services Act, which would require the new regulators that will replace the FSA (The Financial Conduct Authority (FCA) and the
Prudential Regulation Authority (PRA)) to take into account the specific issues arising from social investment. 3.2.2 CAF supports the adoption of such an amendment, as it is crucial if financial regulation is to effectively and appropriately govern social investment and enable the government’s stated aim of growing the social investment market. Concerns that an amendment of this kind distorts the role of the regulator by giving preferential treatment to one sector are ill-founded: “social investment” should not be viewed as a sector, rather it is about broadening the definition of investor motivations that the regulator is able to work with.

3.3 Financial promotions
The communication of information about investment opportunities is governed in the UK by Financial Promotion Rules. Social investments where there is an element of return (i.e. which are not just purely philanthropic) fall under the purview of the FSA. Giving out information about them therefore counts as a financial promotion.

3.3.1 A financial promotion can only be communicated if the person communicating it is authorised by the FSA or if the contents of the communication have been approved by an authorised person. There are also specific exemptions for organisations with certain legal forms (specifically cooperatives and industrial societies), as well as exemptions for specific types of investor (e.g. sophisticated investors, High Net Worth Individuals).

3.3.2 There is currently no comparable exemption for social investors, and the majority of charities or social enterprises are not themselves exempt. Hence any attempt to raise capital through social investment will require the involvement of an FSA authorised person, which will add a significant amount of cost for most organisations. This is a particular barrier to the development of retail social investment, as attempts to raise small amounts of investment from individuals are rendered uneconomic.

3.3.3 It has also been pointed out (ref BWB paper) that it is perverse for a system to allow an individual to give their money away to a charitable organisation, but prevent them from making an investment in that same organisation simply because there is the potential for some financial return. This is the case even if the primary motivation for making the investment is achieving the same social benefit as the individual was aiming for through their charitable donation.

3.4 Fiduciary responsibility of Trustees
One of the key responsibilities of charity trustees is to invest the charity’s money responsibly. There is increasingly a tension about what this means, however: is it the duty of trustees to get the best risk-adjusted financial return, regardless of other considerations, so that the charity has the maximum amount of money? Or is it acceptable to take potentially lower financial returns if it is possible to make social investments that also further the charity’s mission (so-called programme-related investments)?

3.4.1 There is extensive Charity Commission guidance covering charitable investments, including recently updated guidance on charities and social investment (CC14). Despite this clarification, there remain a number of issues about how the responsibilities of trustees can be squared with charities making social investments. In particular there is a concern that CC14 guidance only represents the Charity Commission’s view of the situation rather than having any statutory force, and may conflict with requirements laid out in other legislation because the interpretation of what counts as achieving appropriate investment returns is not that clear.
3.4.2 A statutory clarification on the investment duties of charity trustees which takes into account the issues around social investment would be of significant benefit to the development of the social investment market. Giving greater reassurance to trustees on scope of their investment powers would make it easier for charities to make programme-related investments, which could result in a significant source of new social investment capital.

3.5 Legal forms for social ventures
One potential barrier to the development of social investment is the lack of a specific legal form for social ventures. Currently organisations have to decide whether to adopt a charitable form or a commercial form. A charitable form has advantages in that it enables the receipt of donations and conveys certain tax benefits, but it also prevents the issue of equity. A commercial form, on the other hand, allows the issue of equity amongst other things, but it prevents the receipt of donations, and also does not ensure any protection for the organisation’s social mission.

3.5.1 The availability of a new legal form that combined a locked-in social mission with the ability to issue equity could be of real value to social ventures that want to make the most of the potential for investment. This new legal form could also attract tax incentives, specifically targeted at stimulating greater social investment.

3.6 Tax incentives for social investment
CAF recognises that tax issues are not within the remit of the Red Tape Challenge, and that HM Treasury is conducting a separate review of barriers to social investment that will consider taxation. However, it is important to recognise that lack of suitable tax incentives is a significant stumbling block in the development of the social investment market in the UK.

3.6.1 There are a number of existing tax breaks designed to incentivise investment in start-ups and SMEs, including the Enterprise Investment Scheme (EIS), the Seed Enterprise Investment Scheme (SEIS) and the Venture Capital Trust scheme. These are all theoretically open to social investments as well as commercial ones, but the design of the schemes mean that they are in fact poorly suited for social investment. The key problem is that schemes are all equity-based, whereas the vast majority of social investment is currently debt-based. Even for the few social ventures that can issue equity, the lack of liquidity in the market and the lack of suitable secondary platforms means that it is difficult to meet the eligibility requirements for current tax breaks, which are time-limited and demand clear exit opportunities for investors.

3.6.2 Adapting these schemes to encompass debt and quasi-equity, and relaxing some of the liquidity restrictions would open them up to a much wider range of social investments.