Not for Profit eNews

March 2022

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Welcome to the latest edition of MHA Not for Profit eNews.

In this issue, we look at the last chapter in the Kids Company fallout – the long-awaited Charity Commission report and its final conclusions and recommendations of best practice.
As Environmental issues continue to work their way up the agenda, we look at the forthcoming changes to company reporting requirements as well as reviewing the Charities Commissions post-Covid world guidance. Finally, we look at the increasing use of crypto currencies within the 3rd Sector.

Best Regards,
MHA Not for Profit team

Ukraine – conscious charity responses

The recent events in Ukraine have shocked us all, upturned the lives of millions of Ukrainians already, and challenged the sense of peace and security in which many Europeans have lived for two generations, according to Helen Stephenson, CEO of the Charity Commission.

The Commission issued a statement in early March with advice to charities looking to assist those impacted by the events:

1. Trustees of charities which have launched emergency appeals should be aware of the Commission's guidance on **running effective and impactful appeals**, and on **holding, moving and receiving funds safely.**

2. Charities already operating in Russia may come under increasing pressure as a result of the implications of sanctions, difficulties in transferring funds and because of the operating environment for civil society in that country. **Keeping up to date with latest sanctions** and **following guidance on sanctions could be vital.**

3. Operating in high-risk areas has an impact on keeping staff, volunteers and funds safe and trustees of charities doing so should be **following Foreign, Commonwealth and Development Office (FCDO) advice.**

4. With emergency appeals and global crisis often comes an influx of donations, and charities should always know their donors and consider whether or not to accept donations. Again, Charity Commission **guidance** should be followed.

The statement also reminded the general public that giving to established registered charities with experience of delivering humanitarian aid in challenging environments is often the most efficient and helpful way to support those in need.

Concerns of members of the public initiating their own informal fundraising appeals, potentially unaware of the ongoing responsibilities associated with overseeing and managing funds and ensuring they are applied in line with donors' wishes, was echoed by the Fundraising Regulator, who have issued a joint **statement** with the Charity Commission.

Kids Company – Charity Commission report

A period of rapid growth followed by periods of cash flow difficulties and negative press coverage in the media eventually resulted in the compulsory liquidation of Kids Company in August 2015. The Charity's demise dominated sector headlines at the time and has long remained a topic of focus through a Charity Commission inquiry, a conclusion to which has recently been released.

The issuing of the Commission's 'Report' had been delayed to allow other investigations by the National Audit Office and Parliamentary Public Administration and Constitutional Affairs Committee to take place. Furthermore, allegations by the Insolvency Service that the Charity's Trustees and CEO were 'unfit' due to incompetence, operating an 'unsustainable business model' and not acting on 'inevitable failure', went to the High Court.

Whilst such allegations were eventually rejected by the High Court in early 2021, sparing the Trustees and CEO professional disqualification as Company Directors, the Commission's inquiry focuses on the duties and good practice of charity trustees. The Commission has ultimately concluded that Kids Company might have been able to avoid its compulsory liquidation had the Charity not: operated such a 'high-risk business model', unusual for a charity of its size; mismanaged elements of its administration, most notably the late payment of its creditors; maintained higher levels of reserves; rotated key governance and management roles, such as to have longstanding practices challenged constructively; failed to maintain sufficient records, some of which were destroyed or not able to be reproduced.

The Report culminates with a number of lessons for the wider sector, useful for trustees of all charities and other not for profit organisations:

1. A board should be diverse, refreshed regularly and ready to challenge
2. Innovation should be balanced with proper risk management
3. A proper approach to financial planning and reserves management should be adopted
4. Maintaining proper governance, infrastructure and resource planning must be paramount as a charity develops
5. Financial resilience must be a factor in decision making
6. And a message to funders – encourage good governance and support core costs

Lawyers BDB Pitmans have assessed these lessons from a legal perspective in their summary of the Report.

As part of their inquiry, the Charity Commission has reflected on its own actions in the case and on its role in regulating the sector, having faced political and public scrutiny into its ability to hold high-risk charities to account. It concluded its Report by stating:

> “While the conditions surrounding Kids Company’s governance and approach were unique, its operating model and hand–to–mouth reliance on short–term government grants were not. Charities of all sizes, in all corners of the sector, can find parallels between themselves and some of the individual factors that, taken together, led to the Charity’s closure.”

Enhanced requirement for reporting on sustainability

There is to be an enhanced requirement for entities reporting on sustainability and how their organisation is taking steps to become more sustainable. This is a wide-reaching requirement set out by each individual reporting framework, however as this is becoming a hot topic, there has been no shortage of advice, acronyms and frameworks to support entities trying to engage with the new requirements.

The Taskforce on Climate-Related Financial Disclosures has released some **recommendations** on what reporting on climate change and sustainability may look like when the rules become mandatory in April 2022. This includes some recommended, and mandatory if relevant thresholds are exceeded, disclosures and subject matter which can be considered when drafting the Director's reports to accompany the financial statements.

With Climate Change and how everyone can be more sustainable at the forefront of everyone's mind after COP26, now is the perfect time for financial reporting to be similarly scrutinised as to how more sustainability can be encouraged across the breadth of organisations from not-for-profit, to corporate to partnerships and financial institutions.

Post-Covid world for Charities – update to Commission guidance

Following Government's announcement of the downgrading of Covid-19 restrictions, the Charity Commission have updated their guidance on how to adapt and continue operating in a 'post-Covid world'.

One of the key considerations of this guidance revolved around the ability of Charities to meet and continue to meet remotely. With a movement to hybrid working, it is expected that not all meetings will revert to being face to face, and as such it is important for Trustees to check the governing documents of their charities to ensure that they are legally able to do this, if they haven't already done so. If there is an article which prohibits this action, then the Trustees should consider whether they have any legal power to change these articles to enable them to meet in ways which are appropriate for the situation.

Further to this, if there have been situations where AGMs have had to be postponed or cancelled as holding one remotely was not deemed viable, or indeed legal, then Trustees should ensure that whenever and however they are held, it is done so legally and within the parameters of the Charity's governing documents.

The **guidance** also looks at the types of Covid-specific help and support that has been available to Charitable companies and Charitable Incorporated Organisations. The majority of support is coming to an end soon, and as such Charities which have been taking advantage of government support schemes should check to ensure that they are prepared for these support systems to come to a close.

Another area the guidance focusses on is that of charities with trading subsidiaries and the relationship between the two entities. It recognises that for many charities with trading subsidiaries, it may have been necessary for the charity to at least part support their subsidiary's activities whilst their standard business activities were curtailed by Covid-19. Where charities have and continue to support their trading subsidiaries, the Commission reminds Trustees of the importance of considering the needs of the charity first and foremost.

Though Covid-19 restrictions may be ending, the pandemic will have undoubtedly had or continue to be having a significant impact to the way in which many charities operate. Whenever operational changes are made, a charity's governing document should always be carefully considered.

Cryptocurrency and Charities

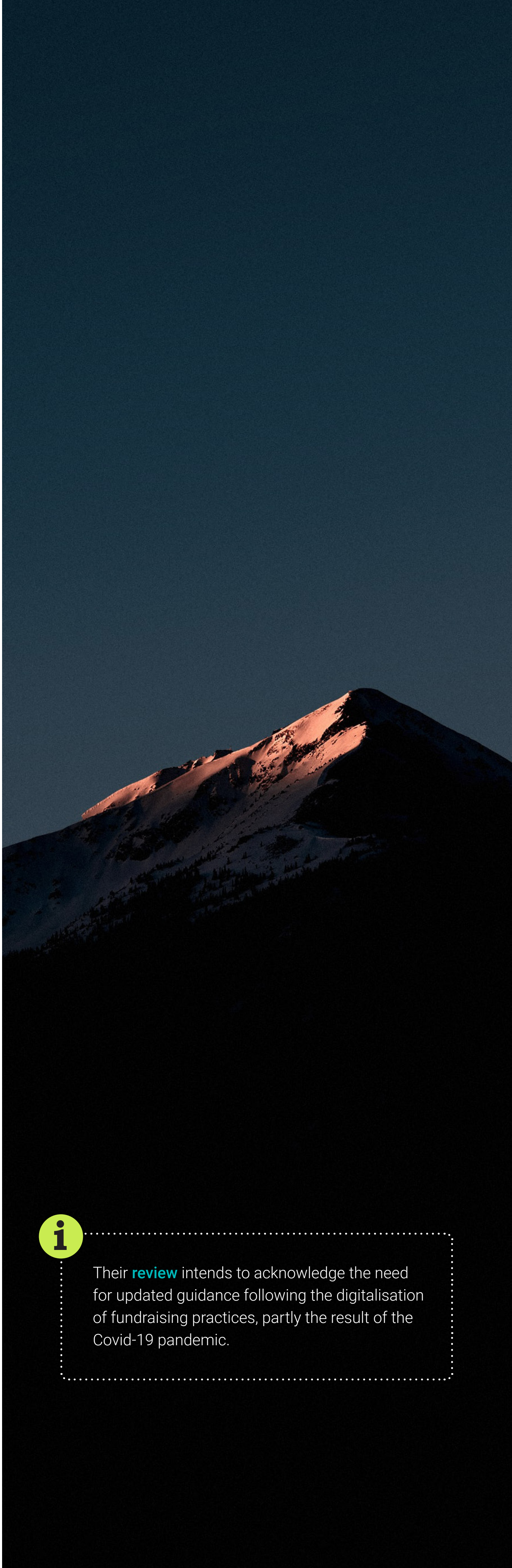
Digital, or virtual, currencies, such as Bitcoin or Ethereum, known as cryptocurrencies or crypto, are slowly becoming more popular. Unlike traditional currencies, which are backed by a government or central bank, they exist using a peer-to-peer system.

This is one reason they are far more volatile and why, historically, the sector has steered clear of the crypto spotlight.

With Charities typically being cautious in their investing and operating strategies, Cryptocurrencies are not generally regarded to be a well-suited match for Not-for-Profit entities. Indeed a recent push from a young philanthropist to begin trading a Cryptocurrency specifically for Charities was unsuccessful and it had ceased to trade within weeks of being set up.

However, there have been some **success stories** with crypto and donations to Charities, with Edinburgh Dog and Cat Home receiving enough funds through Cryptocurrencies to keep their pet foodbank service running for a whole year. More widely, in 2021 there was an increase of over 1500% on a Cryptocurrency giving platform compared with 2020. This is potentially an indication of the fundraising landscape of the future

Such is the growing presence of cryptocurrency in the sector, the Fundraising Regulator is considering including guidance for charities when it reviews its Code of Fundraising Practice later this year.



Their **review** intends to acknowledge the need for updated guidance following the digitalisation of fundraising practices, partly the result of the Covid-19 pandemic.

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