



Not for Profit eNews

July 2022

Now, for tomorrow





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

In this edition we highlight the consultation on the proposed changes to the Charity Commission's Annual Return and encourage anyone who uses this facility to engage in the process.

We also give details on the recent VAT judgement in determining whether an activity is a business or non-business activity for VAT purposes. This will be particularly relevant to entities providing nursery and creche facilities and those receiving grants or subsidies.

We also have an article focussing on safeguarding following the Charity Commission updating their guidance on what charities should and could be doing to protect individuals with whom they engage and what precautions they should put in place to protect those from abuse and mistreatment.

As ever, if there are any points in this edition which you would like to discuss with us in more detail, please do get in touch.

Best Regards,
MHA Not for Profit team



Revisions to Annual Return – consultation

Over the last few years we have seen a staged increase in the information requested from charities by the Charity Commission through the annual return. We are now entering the next phase and accordingly the Commission is consulting on a **new approach to the Annual Return** which would apply to charities' financial years starting on or after 01 January 2023. The new approach, which will include asking new questions to obtain more data, has the ultimate goal of helping the Commission regulate charities more effectively.

The Annual Return - a list of questions registered charities are obliged to answer once a year - exists in part as an information gathering device for the Commission. The publishing of responses is intended to allow the wider public to make informed choices about charities and identify any associated risks and to provide stakeholders with better visibility of the sector.

The changes to the Return also include changes to the Commission's ability to add new questions to future Returns as required in response to unexpected sector-wide events. This comes from recent lived experience where the Covid-19 pandemic highlighted gaps in data the Commission held on charities. Furthermore, the new Return will be more flexible than before, albeit there is still a majority of 'fixed' questions and a small amount of questions relevant to the particular year in question.

The new Return is expected to include 52 questions in total, 16 more than the 36 currently being asked, and will include 24 questions from the existing return, five amended questions, and 23 new questions. The Commission are estimating that the financial impact of introducing the changes to the Annual Return will cost the sector £4.95m, reflecting the increase in the amount of time needed to answer the new requirements.



The consultation is a chance for charities to have their say, ensuring questions are relevant and proportionate to statutory duties, objectives and functions, and is due to close on 01 September 2022 – details of how to respond can be found [here](#).



VAT – business and non-business activities

A recent **brief** published by HMRC sets out their updated approach to determining whether an activity is a business or non-business activity for VAT purposes.

Like so much tax law, HMRC's policy for assessing whether an activity is of a business or non-business nature is grounded in case law. The 1981 Lord Fisher and 1978 Morrison's Academy Boarding Houses Association cases in particular helped create the six criteria 'business test' previously used in making such an assessment:

- 1 Is the activity a serious undertaking earnestly pursued?
- 2 Is the activity an occupation or function that is actively pursued with reasonable or recognisable continuity?
- 3 Is the activity have a certain measure of substance in terms of the quarterly or annual value of taxable supplies made?
- 4 Is the activity conducted in a regular manner and on sound and recognised business principles?
- 5 Is the activity predominately concerned with the making of taxable supplies for a consideration?
- 6 Are the taxable supplies that are being made of a kind which, subject to differences of detail, are commonly made by those who seek to profit from them?

HMRC's long-standing policy had been that a business activity is possible even in the absence of a profit motive. However, more recent judgements, such as those in the 2016 Longridge on the Thames and 2018 Wakefield College cases, have helped clarify that the criteria above are only indicators and that they cannot replace the principles set out by the courts in determining what constitutes a business; in determining this, there should be no reliance on an organisation's overall objective or profit motive. The recent cases have helped develop a new two-stage test, detailed below, which should be taken instead of the six criteria business test above:

Stage 1

The activity results in a supply of goods or services for consideration

An activity that does not involve the making of supplies for consideration cannot be business activity for VAT purposes.

Stage 2

The supply is made for the purpose of obtaining income therefrom (remuneration)

Even if the charge is below cost.

Whilst this change in approach is relevant to all not for profit entities, given the nature of the cases which resulted in the change, it will be particularly relevant to entities providing nursery and creche facilities and those receiving grants or subsidies. We expect to provide further guidance in the coming months as this ruling develops further.



Safeguarding and protecting people for charities and trustees

The Charity Commission updated their **guidance on safeguarding and protecting people** last month, providing the sector with a welcome reminder of how to protect people who come into contact with your charity through its work from abuse or mistreatment of any kind.

Protecting people and safeguarding responsibilities should be a governance priority for all charities. Accordingly, a charity must have appropriate policies and safeguards in place and ensure it is being proactive in protecting its beneficiaries, staff, stakeholders and anyone else who comes into contact with it. Such is the necessity of this governance matter, the Commission will refer concerns to relevant safeguarding agencies where needed to implement safeguarding legislation. Their expectations of charities are detailed below:

- To have appropriate policies and procedures are in place, and they are followed by all trustees, volunteers and beneficiaries
- That checks are performed which ensure people are suitable to act in their roles

- A charity knows how to spot and handle concerns in a full and open manner
- There are clear systems of referring or reporting to relevant agencies as soon as concerns are suspected or identified
- Risks are identified and how they will be managed are set out in a risk register which is regularly reviewed
- That statutory guidance, good practice guidance and legislation relevant to their charity is all followed
- A charity's response to concerns is quick and appropriate investigations are carried out
- Failures and harm are not ignored or downplayed
- A charity's trustee board is balanced and does not let one trustee dominate its work
- Protecting people from harm is central to a charity's culture
- Resources, including trained staff/volunteers/trustees for safeguarding and protecting people, are sufficient
- Periodic reviews of safeguarding policies, procedures and practice are conducted.

The Commission's guidance provides updated links to useful advice and practical support:

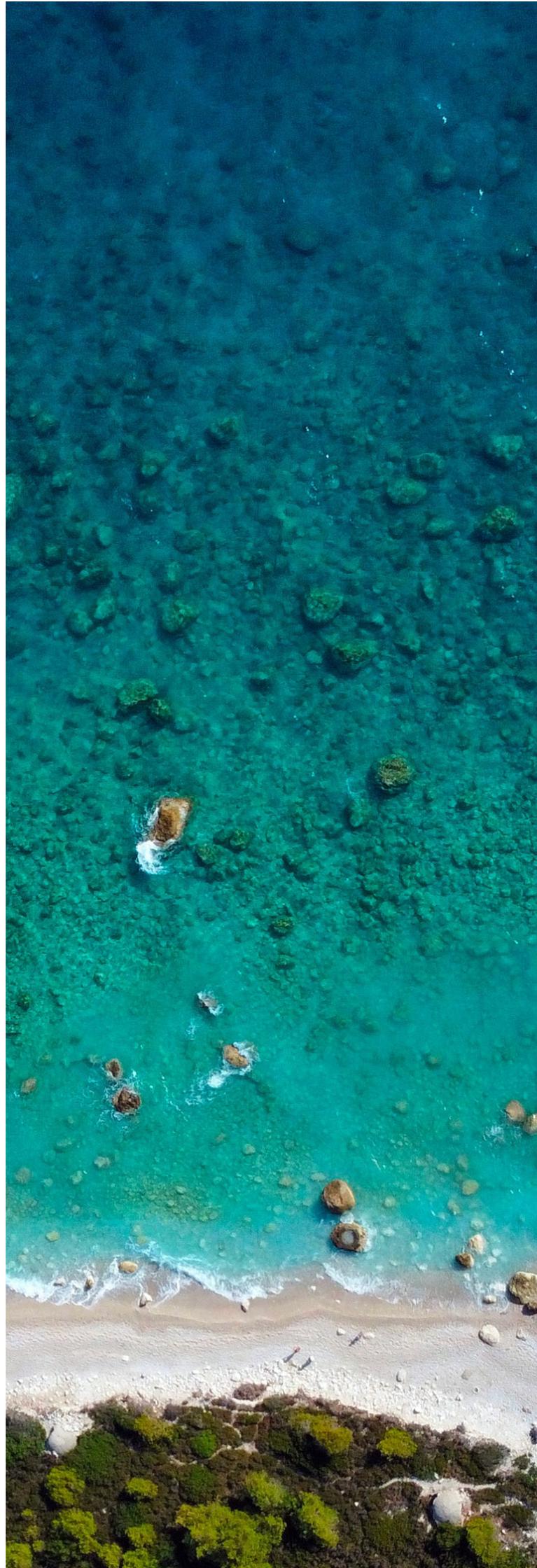
- 1** The National Council for Voluntary Organisations (NCVO) provide a **resource** for advice on how to get started with safeguarding.
- 2** The **Charity Governance Code** includes best practice advice, including on safeguarding.
- 3** Bond, the UK network for organisations working in international development, have produced a **'Good governance for safeguarding' guide** in collaboration with UK Aid.

Finally, the Commission note that if a charity works with children or adults at risk then there are more **safeguarding legal requirements** applicable which must be worked within.

Charity Finance Group launch their new Knowledge Hub

The Charity Finance Group launched its **"Knowledge Hub"** in June, bringing together the charity finance community's collective knowledge and experience, in one easy-to-access place on their website.

The Hub acts as a source of information and knowledge to support charities and includes publications and articles on a variety of topics, from Environmental, Social and Governance (ESG) to risk management.



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