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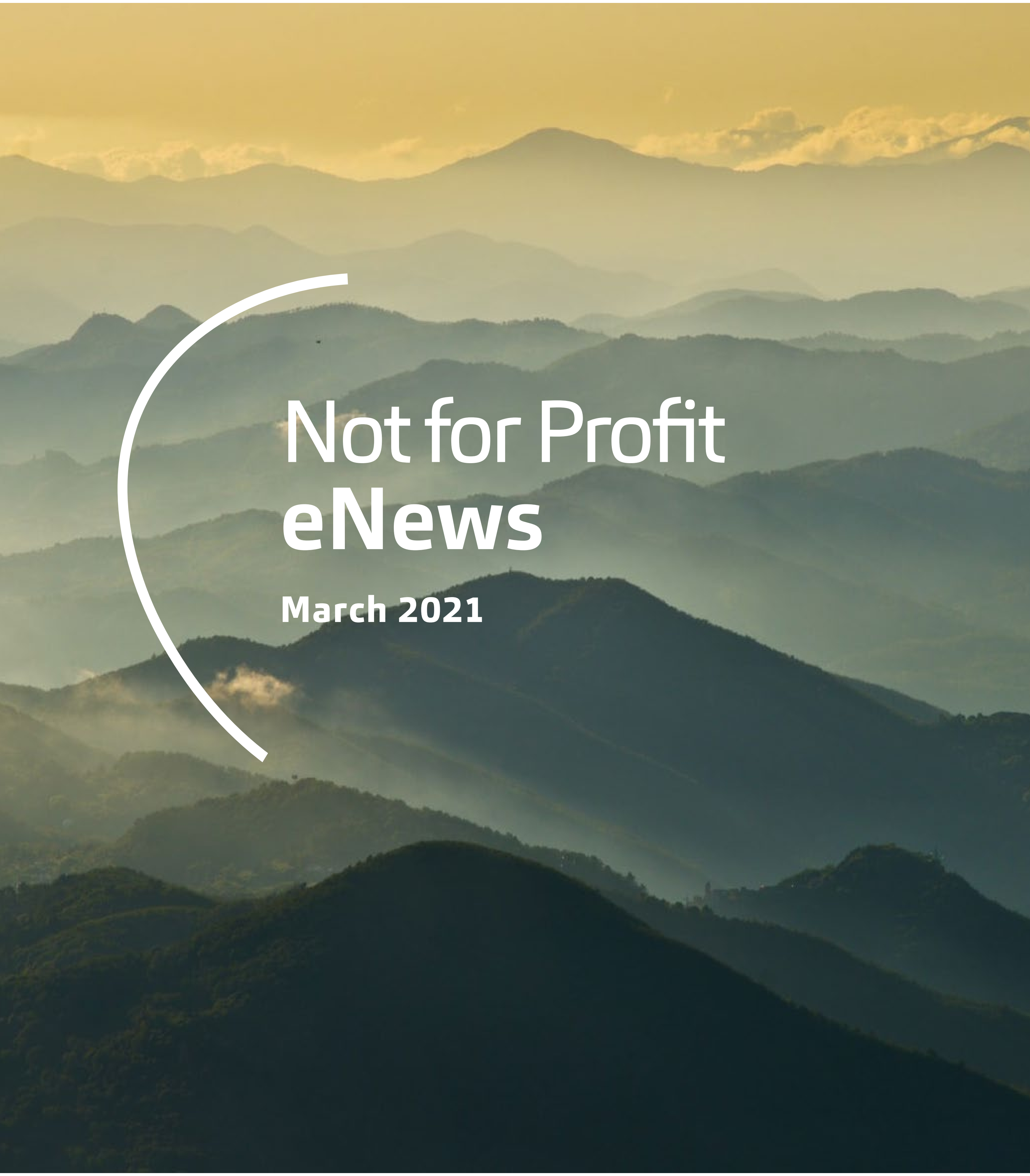

Not for Profit eNews

March 2021

Now, for tomorrow

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March 2021 eNews

Welcome to the latest edition of eNews for 2021 from MHA

In this edition, we look at some of the emerging issues for Charities of Brexit as well as an initial look at the March Budget, and an update on the Shared Prosperity Fund. We also explore some of the knock on effects that Coronavirus support payments might have on your corporation tax position including early information on 'Making Tax Digital' for Corporation Tax and how it is going to affect Charities.

Following the recent High Court ruling on the case against former Kids Company Trustees and its Director we have interviewed the leading defence law firm to find out what lessons can be learnt from this high profile case.

There are also many more articles of interest, so please read on!

Best Wishes,

MHA Not for Profit team

SPOTLIGHT ON

Not for Profit webinar series

Coming in April. This webinar series hosted by our Not for Profit experts will explore the key issues that the sector is facing:

- Going concern and sustainability
- Good governance
- Charity financial reporting

Find out more soon

Brexit Considerations for Charities

Charities and Brexit – issues for consideration

Charities are now becoming aware of the practical hurdles coming into play due to Brexit. Whether it be charities selling goods overseas as part of their activities, or the creative sector having to address new restrictions arising from the movement of people. How Brexit might impact your charity depends on what your activities are and where/how you carry them out. We have set out below some key areas for consideration:

Right to live and work

EU nationals no longer have an automatic right to live and work in the UK, and vice versa, UK nationals no longer have an automatic right to live and work in the EU.

Action: Charities should ensure that all staff and volunteers have the correct visas in place to carry on their work. This could add significant costs to your organisation and may be particularly relevant to charities that run touring theatrical productions.

Export of goods

Do you export goods or have the potential to? For example, does your charity have a website which could make sales to overseas nationals? Exporting goods to the EU can now be very complicated (we are not going to go into detail in this article, but further information can be found at **here.**

Action: Consider whether your organisation makes overseas sales or has the potential to. Research any actions required to ensure exports can continue to be made on a timely basis. For example, update your website with relevant terms and conditions (e.g., which party will pay any import/export charges, or will you only make UK sales?).

Trading with Northern Ireland

Do you export/import goods to/from Northern Ireland, or have the potential to? There are new rules specific to Northern Ireland which must be adhered to. Non-compliance can mean long delays or the return of goods.

Action: Consider whether your organisation trades with Northern Ireland. Research any actions required to ensure exports/imports can continue on a timely basis.

Import of goods

Do you import goods from the EU? There are now a whole host of issues to consider, for example: Which entity will be the importer of record (i.e., who is legally responsible for the payment of import VAT and/or Import Duty)?

What INCOTERMS apply to the movement of goods (these formalise where title passes in the goods, which party has responsibility for insurance, which party is responsible for delivery etc)?

These are just two of many issues that require consideration.

Action: Importing goods from the EU can be very complex and requires considerable thought prior to entering into an agreement to avoid unexpected costs and delays.

Data protection

Whilst the General Data Protection Regulation (GDPR) derived from the EU it is still part of UK domestic law.

Post Brexit the UK has the independence to review the framework, however, the current rules must be followed for now.

Action: Continue to ensure your organisation has appropriate systems and controls in place around GDPR.

Current EU funding

Charities will continue to get any EU funding awarded prior to 31 December 2020. Furthermore, there are still some EU funds that you can apply for post Brexit. Details can be found **here.**

Information about post-Brexit government funding delayed until the summer

Information relating to the Shared Prosperity Fund for has been delayed in its release until the summer Government departments suggest. The fund which includes £1.5billion to aid local communities by 2024 is planned to replace the similar initiative which had been in place from the European Union prior to the Brexit agreement.

The fund will focus on three main areas of training people for work, improving community infrastructure and supporting local businesses and organisations will have to prepare applications in order to be eligible for the grant.

The fund which will be available from April 2022 will be centrally managed by the Department for Work and Pensions and Ministry of Housing, Communities and Local Government.

This could prove a welcome pool of funding for charities who have been adversely affected by the withdrawal from the EU.

Taxation Considerations for Charities

The Corporation Tax Treatment of Coronavirus Support Payments

HMRC have confirmed the treatment of Covid support payments for charities and CASCs.

Charities:

Charities are given a statutory exemption from Corporation Tax on the profits of small-scale trading. The annual turnover limit is currently:

- £8,000; or
- If the charity's total income is greater than £8,000, 25% of its total incoming resources up to a maximum of £80,000.

HMRC have updated their guidance to confirm that receipts from the Coronavirus Job Retention Scheme payments will not count towards the small trading exemption threshold (i.e., they can be ignored for the purposes of s482(1) CTA 2010). The relevant example in the guidance states:

A small charity raises funds by selling items such as pens, pencils, mugs etc. Its profits from this activity ordinarily qualify for the small trading exemption and are not taxed. The charity furloughs some staff involved in the sale of goods but is able to continue to make some profits via online sales. The receipt of the CJRS grant does not count towards the incoming resources threshold and if other conditions are satisfied it may continue to qualify for the small trading exemption on its trading profits.

CASCs:

Registered CASC's are entitled to exemptions from Corporation Tax on activities including:

- Non-member trading income if its turnover from that trade is less than £50,000 a year.
- Property income if its total income from property is less than £30,000 a year.

HMRC's updated guidance states that employment related grants do not count towards these limits: A Community Amateur Sports Club furloughs its staff and receives CJRS income of £30,000. As CJRS is an employment-related scheme, that receipt of £30,000 does not count as a receipt for the purposes of Condition A in section 662(2) and 663(2) CTA 2010.

If all other conditions are satisfied, the CASC will qualify for exemption from corporation tax for its UK trading and/or property income. However, the guidance also states that non-employment related grants do count towards these limits, so may be taxable:

A Community Amateur Sports Club receives a non-employment related Coronavirus Support Payment of £10,000 from its local authority. That receipt of £10,000 does not count as a receipt for the income condition test in section 661CA CTA 2010. However, as it is not an employment-related grant, it does count as a receipt for the purposes of Condition A test in sections 662(2) and 663(2) CTA 2010. As such the £10,000 local authority grant is to be considered as income and, subject to the other conditions, may be taxable.

Making Tax Digital for Corporation Tax: Charities

In 2026 charities may have to report to HMRC for Corporation Tax purposes under new Making Tax Digital rules, which may mean providing information on income/expenditure to HMRC on a quarterly basis.

We understand from the Charity Tax Group that HMRC currently believe that most charities could need to file Corporation Tax returns to HMRC going forward.

Background information

Originally the government said that non-trading activities of charities would be outside of the scope of Making Tax Digital (MTD). However, they say that:

MTD for VAT has shown that, at least for larger charities, operating the MTD requirements has not proved to be more than difficult than for a comparable business. Moreover, discouraging some charities from joining MTD by in effect making it voluntary will mean many will not get the benefits of going digital that other entities will enjoy.

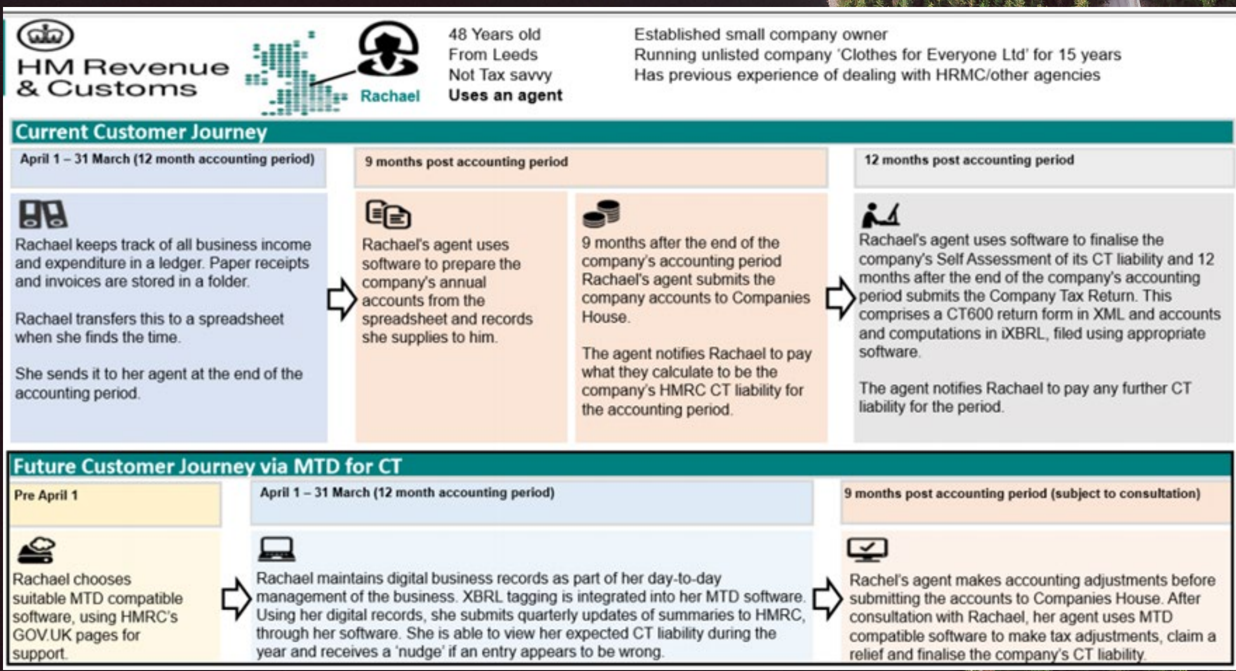
As a result, the government proposes to extend the scope of MTD for Corporation Tax to all charities that are within the scope of Corporation Tax and are required to file a tax return, not just trading subsidiaries.

What is MTD for Corporation Tax?

Whilst details have not been published on if/how MTD for Corporation Tax would apply to charities, for an average company it would involve:

- Ensuring records are maintained digitally.
- Using MTD software to provide quarterly summaries of income/expenditure to HMRC.
- Submit an annual Corporation Tax return in MTD compatible software.

The image below demonstrates the change:



When is MTD for Corporation Tax likely to be introduced?

MTD for Corporation Tax will not be introduced until 2026 at the earliest.

Whilst this is a long way off, HMRC are consulting now on various proposals, so now is our opportunity to feedback.

How might this impact on charities?

It is not clear how charities will be affected by this. For example:

- Could irregular filing be abolished (i.e., meaning all charities would have to file a return annually)?
- Could charities be exempted from filing quarterly reports?
- How much will this additional administration cost in terms of time and software expenditure?

Call for information

We intend to respond to the whole consultation document in writing. To assist with our response, we would like to ask our clients if they have any feedback on the charity specific questions. The consultation document can be found here.

Page 32/33 sets out the position for charities, CASCs and other NFP organisations. There are two key areas that HMRC are asking for responses to:

Within the

- Question 19: Should charities, CASCs and other not for profit organisations, be within the scope of MTD for Corporation Tax where they have income within the charge to Corporation Tax and required to complete a Company Tax Return? If not, please explain why you consider an alternative approach is necessary for charities and what criteria should be applied to assess eligibility for this?
- The government welcomes views from charities, CASCs and other not for profit organisations on how MTD requirements might best be tailored to work for them.

If you have any comments or would like to discuss this further, please get in contact with your local MHA firm.

Other Sector updates

The Budget took place on 3rd March 2021 – whilst we digest the announcements in full, here is a snapshot of the measures announced which could support the charity sector:

- Job Retention Scheme will be extended by five months until the end of September
- Restart Grants will be offered to non-essential retail businesses in England
- Extension of the reduced rate of 5% VAT for goods and services supplied by the tourism and hospitality sector until 30 September 2021
- VAT deferral: Reannouncement of the new scheme to stagger repayments of deferred VAT
- VAT registration threshold: Stays at £85,000 until 2024
- A new Community Ownership Fund of £150 million fund was announced
- Business rates: the continuation for eligible retail, hospitality and leisure properties in England with 100% business rates relief from 1 April 2021 to 30 June 2021. Then from 1 July 2021 to 31 March 2022 the relief will be 66%, but subject to caps
- Support for charities supporting veterans on mental health issues and victims of domestic abuse and zoos
- New financial support and incentives for organisations to take on more apprentices.

We were hoping to hear more details about the £750m support package for charities and hopeful increases to the rate of gift aid reclaimable but nothing was forthcoming. The business rates review will also have to wait until after the summer. The budget will likely balance the need for continued financial support, until the economy is finally freed from the shackles of lockdown, with the need for a move towards repayment of the new historic levels of debt – but we hope to see some continued support for charities.

Kids Company Directors Win High Court Battle

A victory was handed to the former Trustees and the CEO of the Kids Company in February. The High Court ruling has declared that the Directors of Kids Company were not running an 'unsustainable' organisation when it collapsed in the summer of 2015. The ruling comes as many in the sector have looked on nervously, concerned about the personal ramifications of Trusteeships.

The ruling noted that, owing to its growth period from 2012, the Director's reasonably believed that more funding would be able to be obtained from the Government and thus they could continue in the same way that they had been previously. The Court advised that had a wrongful claim of sexual abuse within the charity not been publicised at the same time as receiving a Government grant, the proposed restructuring plan would have likely gone ahead and seen the Charity thrive.

The well-known Charity Law Firm, Bates Wells, acted for five of the seven former Trustees.

These individuals took great financial risk defending their position which must be admired. We were in contact with Philip Kirkpatrick the Head of Charity & Social Enterprise Department at Bates Wells regarding the case and posed the following questions:

Q Kids company collapsed in 2015, 6 years later we have a ruling from a case brought by the Official Receiver. Do you feel that this protracted timescale is normal?

The Official Receiver (OR) had a two-year window in which to bring proceedings, within which time it was also necessary to obtain consent from the Secretary of State. The OR brought them right at the end of that period in 2017, which is an indicator of the size and complexity of the case. Since then, the litigation timetable has progressed much as one might expect. The trial was set down for ten weeks and ten week trial windows can take some time to find in the High Court.

Q The case was brought about by the Official Receiver and not the Charity Commission – do you have any thoughts on this approach?

The Charity Commission was conducting its own investigation in parallel with that of the Official Receiver and it had to pause that investigation once the disqualification proceedings were begun. The trial judge was evidently surprised that the Official Receiver should have begun the proceedings when the Charity Commission is the expert body in the field (with suitable powers) and there was evidently little knowledge or experience of charity matters within the Insolvency Service.

Other Sector updates
Continued

Q What do you think are the main messages that the sector should take from this ruling?

I think there are three main messages:

The law on director disqualification remains unchanged – where no dishonesty or immoral behaviour is alleged against a director and the Court is simply assessing the director's competence, the Court does not substitute its view, with hindsight, of what the director should or should not have done; it considers the context, what was known to the director at the time and what the director did or did not do. It then considers whether that action (and sometimes inaction) were within the range of decisions open to a reasonable director. This approach should be a comfort to trustees.

The principle that the court will look benevolently on volunteer charity trustees, while not actually the basis of the decision in this case, has been emphasised. Again, that should quell some concerns. It's safe to be a charity trustee but take great care.

Nevertheless, one message many may take could be that any form of risk taking in charities is unacceptable to trustees. For example, operating in difficult circumstances without the benefit of substantial reserves (which would not have saved Kids Company anyway), may be a risk too far for many people.

Q Kids Company received and continues to receive national media coverage – do you feel this level of coverage is proportionate?

I think it is inevitable. It is not just the interest the public has in some of the people involved; it is that there has never been such a case before. I hope there never will be again.

Q The periods of disqualification sought by the Official Receiver were as follows: Ms Batmanghelidh 6 years, Ms Bolton 2.5 years, Mr O'Brien 3 years and the remaining Trustees Mr Handover, Ms Robinson, Ms Tyler, Mr Webster and Mr Yentob 4 years. Can you help us understand the reason for the differing disqualification periods? Specifically, at the trustee level?

The periods of disqualification sought were at the lowest end of what was possible, which does raise another question about why it was appropriate to bring the proceedings in the first place. As to the differences between trustees, this remains a puzzling part of the Official Receiver's claim and one for which the Court did not receive a satisfactory answer. The approach seemed to be that if a trustee had been more involved by serving on key committees, that trustee was more at fault for what the Official Receiver alleged was a collective failure for which all were responsible. The obvious implication that the more time and effort you devote, the more culpable you are is not a message that anyone wants to see given to charity trustees.

Q Is this the end of the story or do you think we will hear more from the Kids Company saga?

The Charity Commission has still to conclude its inquiry and issue a report. Whatever that says, I think people will be discussing the implications of this case for a long time. Despite the trustees' success in the disqualification proceedings, merely bringing the case has had a chilling effect on people's willingness to be charity trustees. In order to restore confidence, we really need a clear statement from the Insolvency Service that if things go wrong, charity trustees will only be pursued in the very clearest of cases, those cases (in the words of one judge) that cannot be resisted.

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News in Brief

Student Unions – moving away from Charity Commission?

On 16th February 2021, the Education Secretary unveiled plans to protect free speech at universities in England and Wales following polls in 2019 suggesting that British Adults feel it is under threat. This included measures such as the appointment of a 'Free Speech Champion' to oversee the enforcement of free speech rules, as well as encouraging universities to actively promote free speech.

The Champions will be on the board of the Office for Students. Student Unions, are charities and are therefore currently under the regulation of the Charity Commission. Bringing Student Unions under the OfS means that they will have to follow the same rules as universities in promoting free speech.

We wait to see how these plans develop and the impact on Student Unions. More information on the impact of the issues over the free speech can be found here

Anti-bullying and EDI work in the charity sector needs further funding

Following a report regarding discrimination and bullying at NCVO, a wider conversation about bullying across the charity sector has been started. This has led to current and past employees in the sector sharing their experiences of bullying and racism in the workplace, in the hope that it will prompt these issues to be addressed.

This comes after a report was published in 2019 which outlined six recommendations for addressing these issues in the Charity sector. This included developing an independent body for reporting these issues to, which is in the process of seeking funding. In response to these reports, some donors and funding for charities is being ring-fenced for BAME-led charities and initiatives. This highlights the importance of effective governance and management to support groups who are under-represented in society.

Charity commission to consult on responsible investment guidance

Click here

A listening exercise was undertaken by the Charity Commission last year which identified that current guidance regarding responsible investment is not giving charities confidence that the regulator supports this approach to investment. 'Responsible investments' refers to financial investments that align with a charity's mission and purpose.

The Commission are consulting on revised guidance on responsible investments and intend to publish draft guidance by Spring 2021 and a final updated responsible investments guidance by Summer 2021.

Consultations now open for IFR4NPO

A consultation has been launched on the development of a global financial reporting standard for not-for-profit organisations. There is currently no international reporting standard for the not-for profit sector.

The International Financial Reporting for Non-Profit Organisations (IFR4NPO) Committee, which MHA is a member of, has launched this consultation and is open for comments. The deadline for feedback on Part 1 (examining the needs of NPO stakeholders and the users of financial information) of the Consultation paper is on 30 July 2021 and the deadline for Part 2 (NPO-specific financial reporting issues) is on 24 September 2021 and can be found here.

Cyber Security Update

As Cyber Security issues increase, the importance of having effective cyber security is an ever-present aspect of good governance. In 2020, claims of cyber insurance increased drastically with incidences of ransomware and funds transfer losses up significantly on previous years.

On article from Coalition explains how nobody can be 100% safe from the threat of cyber-attacks, with the work of malicious cyber hackers advancing at an alarming rate. Most of the attacks that do happen, can be easily managed and are from poor internal management. This has been particularly exacerbated due to the increase in home working and remote access of sensitive information.

Grants to develop digital services:

Click here

UK Charities are being encouraged to develop their digital service. Grant-makers are issuing up to £70,000 grants as part of a new £1m funding scheme. Eligible charities that have an annual income of between £75,000 - £10m can apply. The funds will be available over a nine-month period from June. Applications should address one of the following themes: a safe place to be, fighting for gender injustice, children survive and thrive and global health matters.

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MHA Not for Profit Team
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