

# Not for Profit eNews

September 2024

Now, for tomorrow



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

In this edition of eNews we review the findings of the Charity Commission's inquiry into The Mahfouz Foundation, which highlight the responsibility charity trustees have for safeguarding and correctly applying their charities' funds.

We also share our insight on the forthcoming VAT changes for independent schools and highlight our upcoming webinar, and review the seven decision-making principles at the center of the Charity Commission's refreshed CC27 guidance.

Finally, we highlight the ICAEW's 'Volunteers' service for those looking to become a trustee and/or charities in search of a new trustee, as well as our recently relaunched Trustee Hub, aimed at supporting trustees new and old excel in their role.

As ever, if there are any points you wish to discuss further regarding this issue please do get in touch.

Best Regards,  
**MHA Not for Profit team**



# Commission inquiries highlight importance of safeguarding and correctly applying charity funds

**In early September 2024, the Charity Commission concluded its almost three-year inquiry into The Mahfouz Foundation, the findings of which highlight the importance of safeguarding charity funds and the onus the Commission puts on charity Trustees to exercise a proper degree of control of their charities' bank accounts.**

The Mahfouz Foundation ('the Foundation') was a charity whose objects were to advance the history, literature, language, institutions and culture of the Middle East. In September 2021, the Commission became aware of a series of media articles which suggested that donations intended for The King's Foundation (formerly The Prince's

Foundation) but paid to the Mahfouz Foundation were in fact partly transferred elsewhere by the Foundation. The inquiry established that the Foundation's bank account was used by other parties to conduct transactions that were not linked to the Foundation's activities. On further examination, the inquiry identified 'extensive' further example of the trustees of the Foundation allowing its bank account to be used for the receipt and expenditure of funds not intended for the Foundation, nor in relation to the Foundation's charitable objects, including receipts and expenditure for the furtherance of the personal interests of the Foundation's founder.

Furthermore, the inquiry found that funds received by the Foundation for its charitable purposes had been misapplied. However, the inquiry did not find evidence that the trustees had personally benefitted in any way from the misapplications.

The conclusions of the inquiry included:


- 1** The then trustees did not exercise sufficient control over the Foundation's bank account.
- 2** Permitting individuals who were not trustees or staff to represent the Foundation in its dealings with other entities exposed the Foundation to risk. This risk later materialised and caused reputational harm once reported in the national media.
- 3** This risk was undue in that it was not accompanied by any potential benefit for the Foundation.
- 4** The actions of the then trustees amounted to misconduct and mismanagement in the administration of the Foundation, and represented a breach in the trustees' duty to apply the Foundation's funds solely in furtherance of its specific charitable objects.

As a result of the inquiry, a trustee was disqualified from serving as a trustee or holding a senior management position in a charity for 12 years, over £100,000 of funds were returned to donors, almost £50,000 of misapplied funds were recovered from trustees for use by charities with similar objects, and the Foundation ceased to operate.

The Charity Commission has made similar findings from other inquiries, including those into the Burke's Peerage Foundation and Salvation Proclaimers Ministries Limited, highlighting the significance it places on the appropriate application of charity funds and the strong actions it is willing to take when trustees fail to perform these essential duties.

Trustees must ensure that their charity has adequate controls in place in relation to its charity's bank accounts, and are strongly advised to consider the Commission's '[Internal Financial Controls for Charities \(CC8\)](#)' guidance in doing so.





# Riots: letter of support from DCMS Secretary of State

The Secretary of State for Culture, Media and Sport, Rt Hon Lisa Nandy MP, issued a [letter of support](#) to the voluntary sector in the wake of the abhorrent riots and unrest which took place across England last month:

**"Your continued efforts, at both a national and local level, are so crucial, particularly where people who are already vulnerable are put at even greater risk. Trying to heal divisions while keeping your staff, volunteers and premises safe is a challenge none of you should have to face and I recognise various organisations are having to make tough decisions daily. The work you do offers hope in these most challenging times. Many of you are already using your influence to call for peace and unity, offering priceless comfort and reassurance to those who are scared and worried about the future."**

The letter makes reference to the additional guidance and support provided by the Charity Commission, including that which can help trustees, who know their charities, communities, and circumstances best, make good decisions.

The Commission's 'Safeguarding and protecting people for charities and trustees' guidance includes a section on how to [handle and report incidents and concerns](#), which encourages individuals to:

- Handle and record it in a secure and responsible way
- Follow your protecting people and safeguarding policies and procedures
- Act quickly, ensuring you stop or minimise any further harm or damage
- Report it to all relevant agencies and regulators when required
- Plan what to say to those involved with your charity and the media if appropriate
- Be as open and transparent as possible, so that you build the charity's reputation for acting with integrity while protecting confidentiality appropriately
- Review what happened to understand how to stop it from happening again.

# Charity Commission guidance: 'Decision-making for charity trustees (CC27)' refresh

Early in September 2024, the Charity Commission updated its 'Decision-making for charity trustees (CC27)' guidance. Trustees are responsible for governing their charity and making decisions about how it should be run. However, not all trustees will agree with all decisions; constructive debate and challenge are signs of healthy governance. The Charity Commission expects trustees to make decisions in the best interests of their charity and this guidance, with its seven principles for reviewing decisions made by trustees, aims to help trustees meet these expectations.

## 1 Trustees must act within their powers

Decisions must be made to further the charitable purpose

## 2 Trustees must act in good faith

Decisions must be guided by good and honest intention, in the best interests of the charity

## 3 Trustees must be sufficiently informed

Decisions must be based on enough relevant information to consider risks, impacts and resources at the time of the decision

## 4 Trustees must take account of all relevant factors

Relevant factors may include costs, implications and the reputation of the charity

## 5 Trustees must identify and disregard irrelevant factors

Decisions should not be based on personal feelings or prejudices

## 6 Trustees must manage conflicts of interest

Conflicts of interest must be managed formally and regularly reviewed, and decisions not influenced by personal interests or the influences of connected persons

## 7 Trustees must ensure their decisions are within the range of decisions that a reasonable trustee body could make

Decisions must be made with reasonable care and skill, and in the best interests of the charity

Trustees should follow these decision-making principles and keep a record of how decisions have been made. This is usually done by documenting minutes of meetings which should be detailed enough to understand the issues and reasons for the decision made. Where concerns are raised with the Commission, they will review whether trustees have followed these decision-making principles.



# New VAT rules for Private Schools: Key changes and financial implications explained

**After months of speculation, media commentary, and a General Election, HM Treasury (HMT) and HMRC published full details of the plan to impose VAT on private school fees on 29 July 2024. This was a surprise both in terms of its timing and some of the content. This article provides clarity on the changes to the VAT treatment of income earned by private schools and the potential financial implications.**

## **Published information**

HMT and HMRC have published the following:

- Draft Finance Bill Measures for the legislation to be included in the Finance Bill after the Chancellor's Budget on 30 October.
- Explanatory Notes to the Draft Finance Bill Measures.
- A Technical Note entitled "applying VAT to private school fees and removing the Business Rates Charitable Rates Relief for private schools."
- Revenue and Customs Brief 8 (2024): "removal of VAT exemption for private school fees and boarding fees."

## **When will these changes take effect?**

Private schools will be required to pay VAT to HMRC from the date the law takes effect on 1 January 2025. VAT may also be payable on payments received by the school from 29 July 2024.

## Why are there two dates?

Private education will be subject to VAT from 1 January 2025. The normal tax point rules should be observed by a VAT registered private school from that date, with the time of supply typically fixed by the earlier of receipt of payment or the issue of a tax invoice.

Any fees invoiced or paid on or after 29 July 2024, which relate to terms beginning after 1 January 2025 will be subject to VAT. VAT on these payments will be due after 1 January 2025. The Technical Note highlights that HMRC will challenge ineffective prepayment arrangements that did not create a tax point at the point of payment. HMRC focus on the nature of VAT as a transaction tax, with a prepayment required to satisfy an agreed future liability to create a tax point.

## The services subject to VAT

The following services will be subject to VAT:

- 1 The provision of education by a private school.
- 2 The provision of vocational training by a private school.
- 3 The provision of board and lodging to pupils in a private school.

A private school is defined by HMT as a school "at which full-time education is provided for pupils of compulsory school age." Primary and secondary education will be subject to VAT, which will include fees earned by private sixth form colleges. To ensure uniformity across all UK nations, education will be subject to VAT from the pupil's first year of primary school and continue to be subject to VAT if the pupil is under the age of 19.

The provision of education will include extra-curricular classes, such as drama and sports. It will not apply to clubs which are not educational. The draft Finance Bill Measures include provisions to prevent the artificial separation of income to avoid a liability to account for VAT.

## The services which will remain exempt from VAT

Nursery education remains exempt from VAT, whether it is taught in a private school or a standalone nursery. Putting "board and lodging" to one side, all other VAT exemptions for private schools remain unchanged. This preserves VAT exemptions for examination services and other "closely related" goods and services.

The Technical Note envisages that closely related goods and services will include "school meals, transport, and books and stationery". Existing HMRC guidance confirms that closely related services will additionally cover "school trips" and "field trips". The Technical Note confirms that wraparound care provided in breakfast and after school clubs will remain exempt from VAT, as the provision of welfare services. This will presumably apply to both charities and privately owned schools, in the latter case because they are state regulated.

## Recovery of VAT

The Technical Note envisages that "after recovery of VAT on their costs, on average, the government expects schools to be liable for VAT amounting to around 15% of their fee income." There is no support for that statement.

The retention of VAT exemptions for a proportion of fees earned by schools will inevitably change the outcome, depending on the mix of income earned for each school.

Input VAT incurred on costs relating to the provision of education and boarding will be recoverable, but VAT will not be recoverable on services that will remain exempt. Schools will therefore be partially exempt and face having to make potentially difficult calculations to work out the total input VAT that can be recovered.

There may be an opportunity for schools to secure additional VAT recovery on historical capital projects relating to property and computer hardware. This depends on the operation of the Capital Goods Scheme.

## The effect of VAT registration

Private schools will be required to register for VAT once their income subject to VAT exceeds £90,000 in the preceding 12 months or if they expect to exceed £90,000 taxable income in the next 30 days. This means most schools will have to register from 1 January 2025.

If a school has taxable income already, there may be benefits to registering for VAT before 1 January 2025. Income subject to VAT will include education and boarding income received on or after 29 July 2024, which relates to terms starting after 1 January 2025.

This latter income should be included in the turnover calculation by reference to the start of the relevant school term. Once the school registers for VAT, it will be required to pay VAT on all income within the scope of VAT. This will include other income earned which was previously below the VAT registration threshold.



## Pupils with special educational needs

The provision of education and boarding to pupils with special educational needs will be subject to VAT. This will apply, whether or not the pupil has an education, health and care plan (EHCP).

In England, private schools may earn income from local authorities for pupils with an EHCP. There are similar provisions in the devolved nations, although the payments may not be made by a local authority. The Technical Note confirms that local authorities are entitled to recover VAT and that measures will be taken to ensure that other bodies paying private school fees will be compensated for the additional cost of EHCP provision.

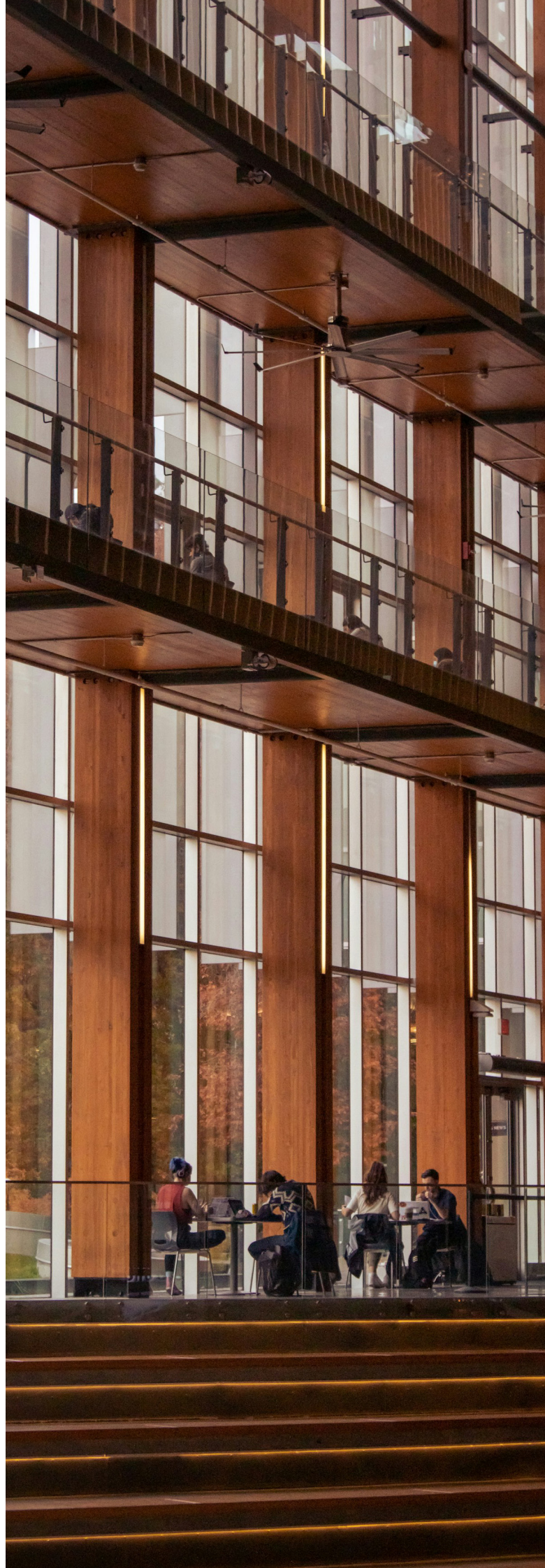
## The consultation

The Technical Note contained five questions, which formed the basis of a consultation. The consultation was open for seven weeks until 15 September 2024. These questions were focused only on operational aspects of the VAT changes, not the principle of whether the changes should take place.

## Conclusion

Careful planning will be needed to ensure that private schools pay the right amount of tax, at the right time, and secure the best possible recovery of VAT on their historical and future costs. It is highly unusual for such a significant sector of the UK economy to cope with such a radical change in its VAT profile and at very short notice.

MHA VAT Partner, Jonathan Main, who wrote the above article, is co-hosting our free [New VAT Rules for Private Schools: Key Insights and Strategic Planning Ahead of 2025 webinar](#) on 31 October 2024. It is expected that HMT/HMRC will publish the results of the aforementioned VAT consultation, together with any final changes to legislation and guidance, on Budget Day (30 October 2024), and so this webinar will provide schools with immediate feedback and guidance on how best to prepare for the changes on 1 January 2025.



# Volunteer as Trustee

For those unaware, the [ICAEW's "Volunteers"](#) service helps charities advertise for and find chartered accountants to join their trustee boards, and such individuals find the role which will help them 'give back' and strengthen the Not for Profit sector.

There are more than 170,000 charities registered with the Charity Commission and more than 900,000 trustees, all of whom need the requisite skills to take leadership responsibility for their charities. In order to help these trustees excel in their roles and fulfil their duties effectively, we have recently relaunched our [Trustee Hub](#), which includes a series of resources and support materials.



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