

Not for Profit eNews

March 2023



Now, for tomorrow





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

In this edition we share the Charity Commission's and Fundraising Regulator's reminder on 'giving safely' to aid appeals in response to the earthquakes in Turkey and Syria.

We also do a deep dive in order to reflect on the recent changes to the Charity Commission's annual return, noting the publication of an accompanying question guide and highlighting new questions which may require a significant amount of preparation time to answer.

Following the publication of Charity Reform Group's (CRG) *Speak up, we need you!* Report, we explore the purpose and findings of their year-long research, and their suggestions on what the sector can do to become better represented and more influential in the 'national conversation'.

Finally, we provide an update on last Summer's Harpur Trust vs. Brazel Supreme Court ruling and the further changes which might arise depending on the outcome of the *Northern Irish Police v Agnew* case, and on the Charity Finance Group's call to the Chancellor to provide VAT relief for donated goods.

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

Best Regards,
MHA Not for Profit team

Turkey-Syria relief effort: 'safe giving' reminder

As they did when the war in Ukraine started over a year ago, the Charity Commission and Fundraising Regulator have **published a reminder** to the public to 'give safely' with regards to international aid efforts in response to earthquakes in Turkey and Syria.

The reminder has been issued as the Disasters Emergency Committee (DEC), which brings together 15 leading UK aid charities to raise funds quickly and efficiently in times of crisis overseas, launches a Turkey-Syria Earthquake Appeal. Both regulators have reminded the public to perform a series of checks to ensure charities are legitimate before making donations, including:

- 1 Check the charity's name and registration number on the Charity Register at www.gov.uk/checkcharity.
- 2 Make sure the charity is genuine before giving any financial information.
- 3 Be careful when responding to emails or clicking on links within them.
- 4 Contact or find out more online about the charity that you're seeking to donate to or work with to understand how they are spending their funds.
- 5 Look out for the **Fundraising Badge** – the logo that says 'registered with Fundraising Regulator' – and check the Fundraising Regulator's **Directory** of organisations which have committed to fundraise in line with the Code of Fundraising Practice.

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Much of the guidance detailed in our **March 2022 eNews publication** with regards to the war in Ukraine remains relevant and applicable to anyone looking to support the DEC Turkey-Syria Earthquake Appeal.





Charity Annual Return: question guide

In last month's edition of eNews, we reported that following a period of consultation, the Charity Commission had amended their Annual Return. Seemingly in acknowledgement of the impact that the series of **new questions** added to the Return have had on charities, the Commission has recently published a **question guide** to support charities in completing this task.

The guide is designed to help charities understand what information they will need to prepare for the 2023 Annual Return, and defines several key terms used, such as Gross Income, Charitable Activities, and Parent Charity. Importantly, it also contextualises why certain questions new to the 2023 Return are being asked. **For example:**

- by assessing the breakdown of a charity's income, the Commission can identify if a charity is susceptible to risks associated with dependence on a single income stream;
- by asking for the value of grants made to types of recipients, the Commission can determine the financial risk faced by the sector should charity-to-charity grants not be made;
- by asking whether a charity's address public address is the same as its administrative headquarters, the Commission can keep information on the Register of Charities up to date and accurate, increasing public trust and confidence.

Detailed below are a number of the Return's new questions, the compilation of the necessary information for which may require some planning:



Income

What was the total value of the grants received from central government or a local authority during the financial period of the return?



Expenditure

In the financial period of this return, what value of grants were made to:

- a. Individuals
- b. Other charities
- c. Other organisations that are not charities



Activities outside of the United Kingdom

How was income from outside of the United Kingdom received by your charity in the financial period of this return?

How much money did your charity send in total outside of the United Kingdom using a method other than the regulated banking system in the financial period of this return?



Employees

At the end of the financial period of this return, how many:

- a.** People were permanently employed by your charity
- b.** People were on fixed-terms contracts with your charity
- c.** Self-employed people were working for your charity

Note that the question guide helps define 'employee', 'fixed term contract' and 'self-employed' to assist the answering of this question.

How many of the people above work on behalf of your charity outside of the United Kingdom?



Governance

Which of the following policies and procedures did your charity have in place at the end of the financial period of this return?

- a.** Internal charity financial controls policy and procedures
- b.** Safeguarding policy and procedures
- c.** Financial reserves policy and procedures
- d.** Serious Incident Reporting policy and procedures
- e.** Charity financial reserves policy and procedures
- f.** Internal risk management policy and procedures
- g.** Trustee expenses policy and procedures
- h.** Trustee conflicts of interest policy and procedures
- i.** Investing charity funds policy and procedures
- j.** Engaging in political activity policy and procedures
- k.** Bullying and harassment policy and procedures
- l.** Social media policy and procedures
- m.** Engaging external speakers at charity events policy and procedures



Charity leaders urged to speak up

The Charity Reform Group (CRG) and the Sheila McKechnie Foundation have recently published their *Speak up, we need you!* report on the importance of charity CEO's becoming part of the national conversation and using their collective voice and influence to further the reforming role of civil society.

Following its first year of operation in 2022, the CRG focused on an initial question: why are charity CEOs relatively under-represented in the national conversation? To get an indication of the problem, they looked at some of the places that 'national conversation' takes place (e.g. current affairs television programmes), reviewed numerous episodes of these programmes, and found that just 2% of the total guest appearances were from members of the civil society, compared to 10% from academia, 10% from journalism and 4% from business. To find out why this is, the CRG hosted a series of conversations with charity CEOs and leaders from other sectors. The Report sets out the CRG's findings over three sections, some key findings from which are detailed below:

1 Speak up, we need you!

a. People outside the sector want charity CEOs to speak up and be heard; charities do invaluable work and have vital perspectives urgently needed in public debate.

b. Opinions included concern that the charity sector is too polite and, therefore, too easily seen as a 'nice to have'; there was encouragement to proceed with more confidence and conviction.

c. A theme of the conversations was the absence of a strong collective voice for the sector, speaking up about issues affecting society.

2 So, what's stopping us?

a. External factors such as Government's reluctance to engage and their propensity to create a hostile environment, 'culture-wars', and a lack of visibility and understanding of the breadth of the sector.


b. Internal factors such as conflicts of interest between charities, an excess of caution in charity governance, and the need to resolve the sector's own issues of practice, culture and reputation before speaking up in a wider context.

3 What needs to happen?

a. Reach out to senior stakeholders in other sectors – these are people who are well-networked and see problems and opportunities.

b. Collaborate, both within and outside of the sector.

c. Strengthen the sector, by focusing on engaging good communicators, showing solidarity with other charities and charity leaders being publicly targeted, and reassessing the risk-aversity of governance.



Brazel vs. Harper Trust – more changes to holiday pay?

The Supreme Court judgment in Brazel v Harper Trust had significant consequences for employers who have part year workers employed on an ongoing basis. It found that these workers had a full holiday pay entitlement of 5.6 weeks under the Working Time Regulations. Even though this resulted in some part year workers being entitled to a greater amount of leave compared to a full-time worker, the Supreme Court found that this was compliant with the Working Time Regulations.

The Working Time Directive (original European legislation) allowed for anyone working less than full time, be that hours per week or weeks per year, to have a pro-rated entitlement; when the Directive was enacted in the UK as the Working Time Regulations, this principle was not included and therefore, the Regulations state that all workers are entitled to 5.6 weeks' leave per year.

The UK could have amended its domestic legislation in this respect but chose not to.

After the Supreme Court judgment, employers were advised to implement the correct payment of holiday pay to part year workers promptly in order to reduce the likelihood of claims for backdated holiday (there being a three-month time limit for such claims).

The Supreme Court is now considering the Chief Constable of the Northern Irish Police v Agnew in respect of whether that gap of three months or more between underpayments does in fact end a claim. If the Supreme Court judgment is in favour of the claimant, this will substantially increase the value of claims for backpay in respect of underpaid holiday pay.

At the same time, however, the Government has now proposed new legislation to remove the inconsistency regarding part year workers' holiday pay and pro rate it according to their actual weeks of work. Consultation on the proposal is open until 9 March 2023 but if it proceeds then the use of the 2.07% calculation for holiday pay in respect of part year workers may well return.

Charity Finance Group: call for VAT relief for donated goods

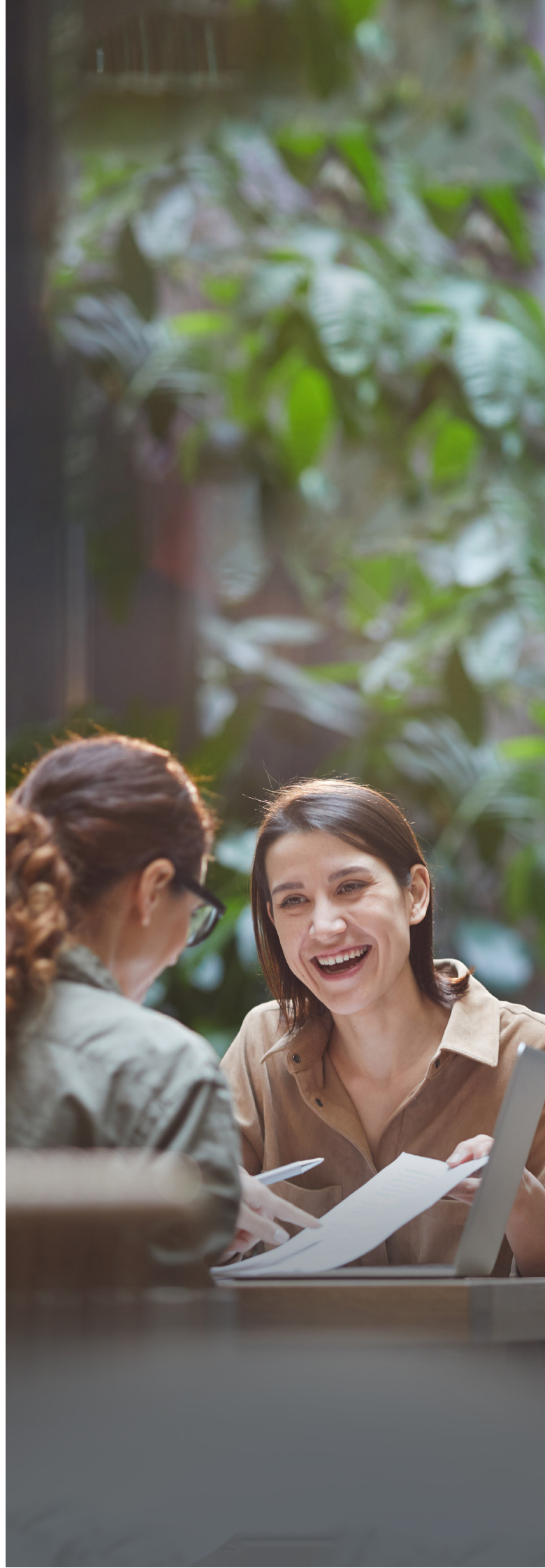
The Charity Finance Group has joined with charities, trade organisations and business to **urge the Chancellor** to unlock vital support for families who are impacted by the rising cost-of-living.

The group has written to the Chancellor asking to provide VAT relief on goods donated to charities, where these goods will later be provided free of charge to people in need, such as at food banks or emergency relief. This would bring the rules into line with existing reliefs, which provides VAT relief for donated goods that charities would sell on, such as through their charity shops.

The current VAT relief supports the donation of millions of products each year to charities and volunteer organisations, which are often sold on. But the regulations require businesses to pay VAT when donating goods to directly support people in need, which is holding back the full potential of excess inventory from being donated at scale.

Without these changes, it would be more cost-efficient for retailers to store or even destroy items, than it would be for them to donate them.

Richard Bray, Chair of the Charity Tax Group, said: "This is a simple and practical measure that has the potential to deliver huge benefits to those struggling with the cost-of-living crisis in the country, as well as reducing waste. We urge the Chancellor to introduce it without delay."



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
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