AUDIT • TAX • ADVISORY

Not for Profit eNews

July 2023

Now, for tomorrow

mha | An independent member of bakertilly INTERNATIONAL

July 2023 eNews

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

In response to the list of employers, including a handful of charities, who were recently 'named and shamed' by the Department for Business and Trade for being in breach of National Minimum Wage law, our Employment Tax experts have detailed what has and can go wrong for employers in this complex and ever-changing area.

We also highlight recent clarifications made by HMRC with regards to the new Gift Aid rules associated with individuals who have waived a refund or loan repayment due from a charity, and secondly the potential removal of fundraising limits associated with lotteries.

Finally, and in light of continued inflation volatility and the cost of living crises, we share details of a National Lottery Community Fund funding available to smaller entities in the sector.

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

Breaches of Minimum Wage Requirements

In late June, the Department for Business and Trade (DBT) "named and shamed" 202 organisations which they found to be in breach of National Minimum Wage (NMW) law, failing to pay nearly £5m to around 63,000 workers, including three charities. In light of this announcement, MHA's HR Solutions team have summarised the key issues and consequences of breaching this law.

Background

The NMW was introduced in the UK in 1998, partly due to the decline of in trade union membership but also as it was recognised that there were people who were low paid who tended not to work in unionised sectors. It set minimum pay rates for workers aged 16-17, 18-21 and 22+. A separate rate was then set in 2010 for Apprentices aged up to 19 or during their first year of apprenticeship.

The National Living Wage (not to be confused with the voluntary Living Wage) was introduced in 2016. This was effectively a new minimum wage level for workers aged 25+. Annual increases to both the NMW and National Living Wage are recommended by the Low Pay Commission and largely accepted by the Government.

Over the years, there have been several changes to the age ranges resulting in the current banding of 16-17, 18-20, 21-22, with the National Living Wage applying to workers aged 23+. From 2022, the apprentice rate has been the same as the 16-17 year old rate. It's no wonder that employers find this confusing!

Facing the Consequences

An employer who fails to correctly pay the NMW will be fined twice the amount of the underpayments. However, that is the least of their problems as they will also be placed on the Government's "Name & Shame" list. This list is published by the Government and released to the press who can be keen to in highlighting the shortcomings of these organisations. And charities are not afforded exemption; the most recent list includes United Church Schools Trust, Little Sunbeams Pre-School (Portsmouth) and St Mark's Pre-School in Salisbury, all of which have charitable status.

As well as a financial penalty, employers face a reputational risk for failure to comply. This may result in a loss of customers for commercial organisations but it also has ramifications for the Not for Profit sector.

Most Not for Profit organisations often rely on public fundraising, sponsorship and grant funding. Any damage to reputation will heavily impact on this, be it directly - Government grants may be denied to those who have breached minimum wage legislation - or indirectly - private sponsors or the general public will be disinclined to support organisations who are seen as being unscrupulous.

In addition, candidates have more awareness regarding potential employers via social media and it is more important to them now than ever that employers act ethically. This is of particular relevance in the current labour market where employers are effectively competing for employees. Therefore, this is a risk that most in the Not for Profit sector cannot afford to take.

So where do employers go wrong?

Other than flagrant breaches of the regulations, well-meaning employers can inadvertently fall foul due to the following:

1 Failure to keep up with the annual increases

The NMW and National Living Wage rates increase in April each year so employers who have workers on minimum rates need to ensure that these are increased in line with legislation.

2 Age range changes

As noted above, there have been a number of changes over the years since the NMW was introduced in respect of the age ranges for qualification for certain rates, therefore employers need to ensure they have always paid the relevant age-related rate and continue to do so.

3 Individual employees age increases

Employers need to ensure that they track employees' ages in order to increase their pay rates accordingly

4 Apprentice rate

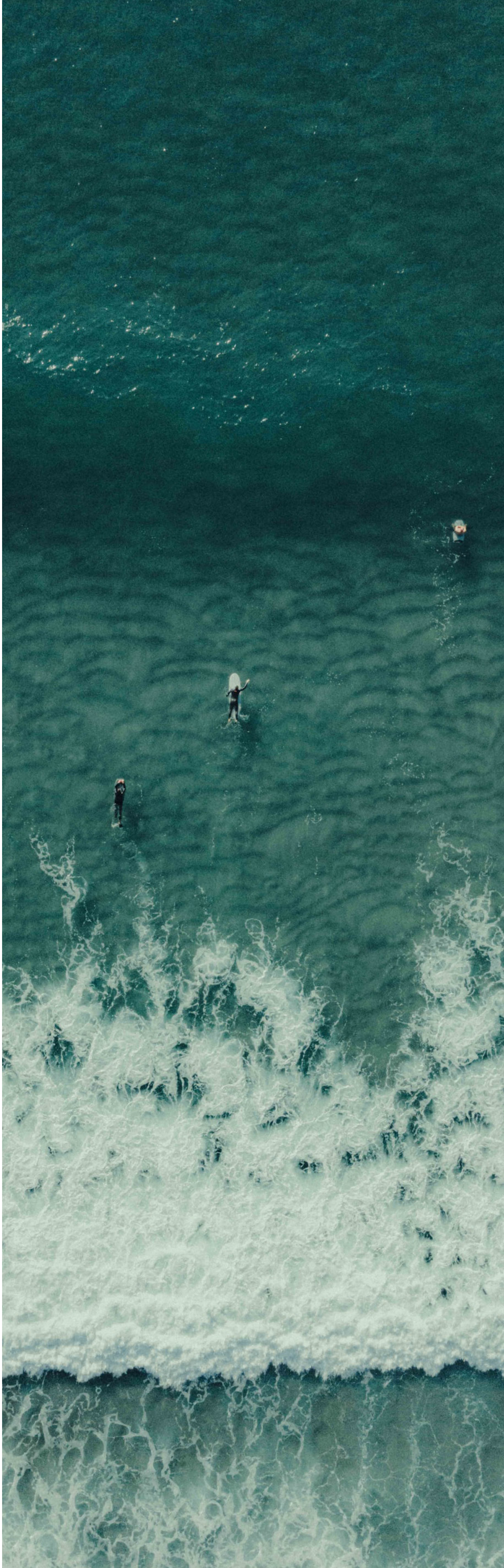
This can only be applied to workers on official Government approved apprenticeships schemes; it cannot be applied to workers whom employer deems to be an "apprentice" due to their age and / or lack of experience. In addition, the Apprentice rate only applies during the first year of apprenticeship or if employees are aged 19+. Employers need to ensure that Apprentices are moved onto the appropriate age-related route at the relevant time (this was where Little Sunbeams Pre-School (Portsmouth) got caught out).

5 Exclusion of premium pay

NMW and National Living Wage calculations are based on basic hourly rates only. Where employees are paid at a premium rate e.g. an overtime rate or an enhanced rate for working at weekends or on public holidays, only the portion of the rate which is the normal basic hourly rate paid counts towards the calculations; the enhanced portion is discounted.

6 Calculations and reference periods

This is where employers are perhaps most likely to inadvertently breach the regulations. The reference period for NMW and National Living Wage purposes is set by the frequency with which a worker is paid. It can be a week, a fortnight or any other time but no longer than a month. The hours worked during the reference period do not individually have to be paid at the correct rate, but must be on average. Where irregular hours are worked but pay is based on 1/12th of annual salary, it is possible for the average pay in a reference period to fall below the NMW or National Living Wage requirements.



Clarification of HMRC Gift Aid guidance

HMRC have recently clarified two sections of its guidance with regards to Gift Aid and specifically the waiving of a refund or a loan repayment due to an individual from a charity.

HMRC consider a donation to be a payment of a sum of money. This had historically led to misinterpretation in instances where individuals waived a refund or loan repayment due from a charity, which increased in frequency during and immediately after the Covid-19 pandemic. Clarification has since been made: a 'clear agreement' to cancel a loan or not accept a refund can now be treated as a donation of a sum of money.

This has a positive knock-on impact for charities which claim Gift id, as Gift Aid can only be claimed on 'qualifying charitable donations', which providing there is a clear agreement, now includes the waiving of a refund or loan repayment by an individual.

Potential removal of fundraising limits associated with lotteries

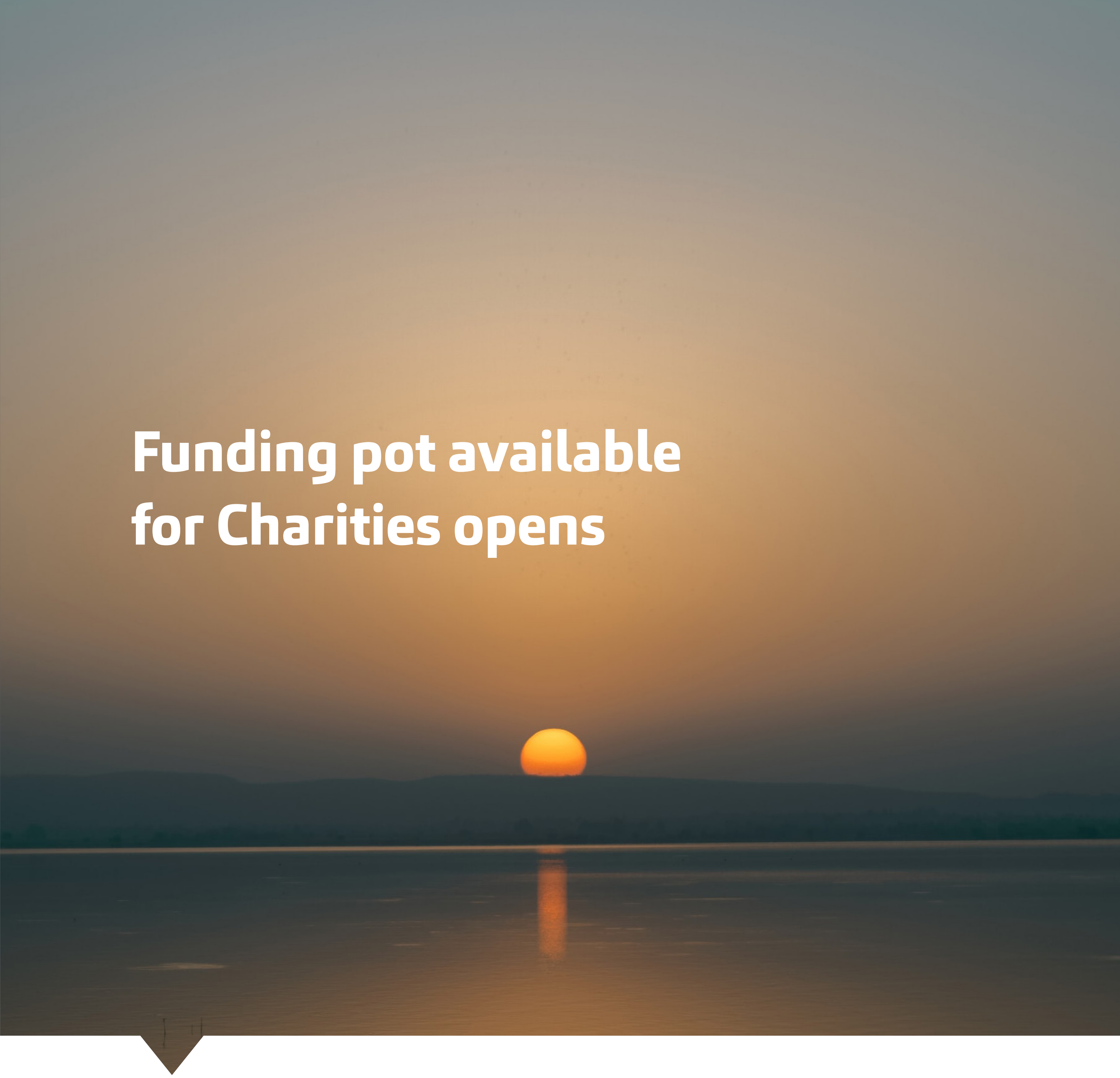
Society lotteries are able to sell £50m-worth of tickets each year, with a limit of £5m per draw, each with a maximum prize of £500,000.

However, the People's Postcode Lottery (PPL) believe that this cap is preventing the 20 trusts for which it manages lotteries from raising an additional £198m over the next five years, and so are meeting with the Civil Society Minister, Stuart Andrew, to discuss its removal.

Speaking to sector news outlet Civil Society, the Managing Director of PPL **said:**

"We want ministers to be fully aware of the negative impact their current policy is having on charities and the communities and causes they serve … It is not even clear what the current policy is meant to achieve, and indeed it seems to be pointless. What is clear however is that it is negatively impacting on the finances of many charities."

Funding pot available for Charities opens



A **funding pot** which is to be distributed by the National Lottery Community Fund has opened in order to assist with organisations to cover costs as a result of the cost of living crisis and high inflationary pressures. The cash is available for small to medium sized charities which have a turnover of roughly between £10k and £1m. The grants which are awarded can be for anything between £10k and £75k.

It is not only the size of the organisation, which is key, the organisations in question must offer what is considered a 'critical service, and there must have been a tangible impact on their activities from the increased costs over the past year. The funding can then be utilised in a number of ways including covering core costs of delivering their activities like paying for rent, utilities, salaries and volunteer costs.

The £70m that is becoming available is part of a wider £102m that was pledged by the government to support organisations at one of the most difficult periods that society as a whole has experienced in recent memory. The remainder of the pledged funds is going towards administering the funds as well as a further pot of funding available to fund energy efficiency and sustainability programmes.

Applications are open until 16th October 2023 and can cover costs for the period 24th July 202 and 31 March 2024.

MHA Not for Profit Contacts

Sudhir Singh
Head of MHA Not for Profit
E: sudhir.singh@mhllp.co.uk

London & South East
Stuart McKay
Partner
E: stuart.mckay@mhllp.co.uk

North West
Nicola Mason
Director
E: nicola.mason@mooreandsmalley.co.uk

South West
Bianca Silva
Head of Education, Partner
E: bianca.silva@mhllp.co.uk

North East
Rebecca Hughes
Partner
E: rebecca.hughes@mhllp.co.uk

MHA Not for Profit Team
A national commitment to charities

A national Not for Profit team with local specialists that understand the sector in your area.

Broad Not for Profit expertise covering charities, social enterprises, education, housing and the public sector, with organisations at all stages of their life cycle.

With over 1,000 Not for Profit clients, we have extensive experience of all sizes and types of organisations.

Strong relationships established with both executives and trustees.

Insights from our long standing experience at a policy setting level and from working with sector bodies and regulators.

A wide range of tailored services: assurance, tax, compliance, advisory, training and more, delivered with practical understanding.

Practical support for strong and effective financial governance at #MHATrusteeHub.

Worldwide specialist sector support through our independent membership of Baker Tilly International.

Disclaimer

mha | hub

MHA Hub offers clients and contacts a diverse programme of professional events, training, and publications that has been created to offer the latest in best practice, good governance, and regulatory updates and insights.

About MHA

MHA is an association of some of the best independent regional UK accountancy firms

£142
Million turnover

19 Offices nationwide

1204 Staff

110 Partners

About Baker Tilly International

Baker Tilly International is a network of independent accountancy and business advisory firms; our firm is an independent member of the network

703
offices

41,234
people

145
territories

To find out more about the services MHA can offer, please contact

T: 0207 429 4147

mha-uk.co.uk

Now, for tomorrow

An independent member of bakertilly INTERNATIONAL