

Not for Profit eNews

May 2023

Now, for tomorrow



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

In this edition of eNews we explore the Government's ongoing attempts to simplify and modernise the UK Tax system, and how these are impacting the Not for Profit sector; we highlight live consultations regarding Charity tax compliance and off-payroll workers, and changes already made to Retail Gift Aid Scheme end-of-year letter templates.

We also reflect on two pieces of Charity Commission guidance. Firstly, the long awaited CC14 investment guidance which is due to be revised in Summer 2023 and which is currently being 'road-tested' by a number of charities. Secondly, 'CC8 internal controls' guidance which has recently been revised to include important considerations in the wake of increasing numbers of cyberattacks against Charities.

We also draw attention to The Big Help Out initiative, and free webinars available to those considering becoming a charity trustee and for charities seeking to retain trustees.

Finally, our Human Capital Advisory team provide an update on holiday pay and entitlement, and the impact that the latest Supreme Court ruling may have.

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



Simplification and modernisation of the UK Tax system

Spring 2023 update

In late April the Government announced its **technical tax policy proposals** to aid the simplification and modernisation of the tax system, as well as tackle non-compliance and make the system fairer for taxpayers and better for traders. Whilst many of the proposals will not directly impact the Not for Profit sector, listed below are details of several which might:

1 Charities tax compliance consultation

A **consultation** with the Charity sector has also been launched to tackle non-compliance and thus protect the integrity of the sector. Many charities are able to benefit from tax relief if certain rules are met, however the Government acknowledges that many of these rules aren't working as intended.

The consultation is inviting views on:

- Tainted charity donations
- Approved charitable investments
- Non-charitable expenditure
- Charity filing obligations

The Government consultation ends on 20 July 2023.

2 Off-payroll working consultation

The Government is considering a potential legislative change regarding off-payroll working rules.

HMRC is aware that issues can arise when off-payroll workers are not correctly processed through a charity's payroll. This issue arises when both the charity make the correction and pay over the underpaid PAYE as the deemed employer as well as the worker and their personal service company also making tax and National Insurance contributions (NICs) on the same income. The consultation seeks input on a potential change to the rules to allow HMRC to set-off the tax and NICs already paid against the PAYE liability, resulting in a more equitable distribution of the cost of the worker's tax liability.

The Government has launched a **technical consultation** to understand how the proposed changes would impact the various parties effected. The consultation ends on 22 June 2023.

3 Gift Aid

The Government have committed to continue working with charities to improve the way that Gift Aid works and look at ways the administrative burden can be minimised through the use of digital technology.

4 Transfer pricing

The government will publish a consultation in May on simplifying and updating transfer pricing legislation, ensuring its application is clear and that outcomes remain consistent with underlying policy intention, international standards and the UK's bilateral treaties.

As well as proposals for future changes, some changes have already been made, such as the **simplification of end-of-year Retail Gift Aid letters**. End-of-year letters to donors are a compulsory part of operating a Retail Gift Aid scheme using a 'non-standard' method (i.e. **Methods A or B**), however an end-of-year letter is only required where donations in a given year are above £20 or every three years as long as this is part of the retail Gift Aid terms and conditions agreed by the donor.

The new HMRC template represents a substantial simplification:

- It provides a single figure covering the total Gift Aid claimed compared to up to 12 figures in the old letter.
- The length of the mandatory content has been reduced significantly.
- Around half of the mandatory content can be provided on the reverse of a printed letter or at the bottom of an email as additional information.
- For 2023, HMRC has indicated that it is content for either the new template or old template letter to be sent, but the new letter will be compulsory from next year.

Dialogue continues between HMRC and sector representatives including the Charity Tax Group and Charity Retail Association in relation to simplifying the full suite of retail Gift Aid template letters, which should be in place for 2024.



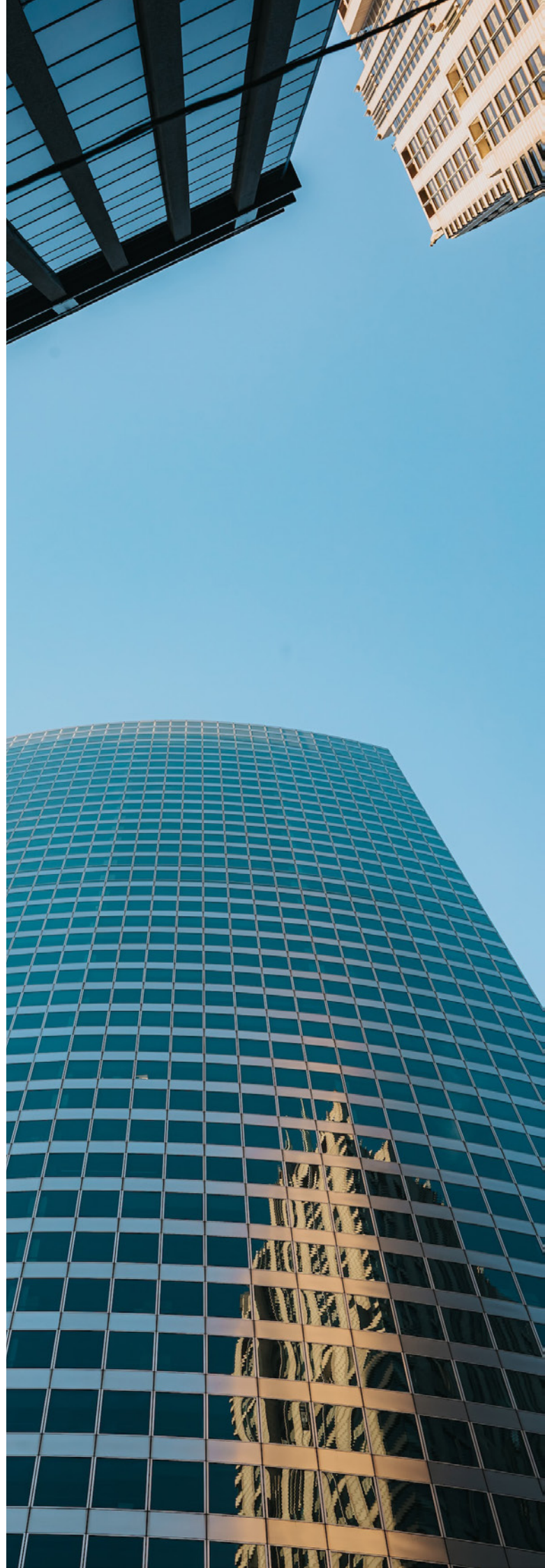
Charities and investment matters

Road-testing the Charity Commission's new CC14 guidance

The Charity Commission's *Charities and investment matters: a guide for trustees* (CC14) guidance is currently being redesigned, with a revised version expected in Summer 2023.

As its release nears, the Commission has asked a sample of around 1,000 charities which have investment income to 'road-test' the new guidance, and have shared the draft with charity lawyers and other groups who represent the interests of charities with investments. The test is not another consultation, which took place in 2021, but is designed to ensure the guidance is structured and worded in a way which is useful to trustees and their advisers. Whilst the exact details of the revised guidance is yet to be released, it is understood that it will be:

- 1 Shorter and more concise** - the Commission has succeeded in reducing the guidance by some 75%, to fewer than 6,000 words
- 2 Clearer and more inclusive** - the Commission is updating its language and retiring some terms that are considered misleading, or open to interpretation.
- 3 More comprehensive on investment approaches** – designed such that trustees can feel confident deciding what is in the best interests of the charity.





Cyber attack statistics highlight importance of charities' internal controls

The Department for Science, Innovation and Technology recently published the **Cyber Security Breaches Survey 2023**, which found that **24% of charities have been victims of cyber breaches or attacks in the last 12 months, compared with 30% in 2022.**

The most common breaches or attacks were phishing attacks (83%), followed by others impersonating the charities in emails or online (29%) and viruses, spyware or malware – excluding ransomware (9%). The survey also found that only 31% of charities surveyed were insured against cyber security risks, with board members and trustees failing to recognise cyber security as a risk to the charity.

The findings of the Survey highlight the importance of Not for Profit entities' internal controls, and have been released in the same month as the Charity Commission's **Internal financial controls for charities (CC8) guidance** has been updated.

The revised guidance urges charities to review their financial controls to ensure they helping to protect the charity against risks, including those from newer technology such as cryptoassets.

The revised guidance, which has been redesigned to be more concise and clearer than before, now covers issues that were not in existence or widely relevant when it was first issued. A key section of the revised guidance relates to operational risks, including the risks of fraud and cybercrime. With charities increasingly storing information online, the sector's exposure to cybercrime is increasing. As such, the guidance suggests charities should have suitable policies which cover:

- access, use, storage and processing of electronic data
- the use of computers and data storage, such as cloud storage and memory cards
- handling breach detection, investigation and reporting procedures

As well as noting that trustees should ensure their charity complies with UK GDPR and other data protection laws, the guidance also suggests charities should have suitable software to protect against viruses and hacking.

All trustees are responsible for their charity's financial management and therefore the implementation and monitoring of internal financial controls, and ensuring everyone working for the charity understands and follows them.

The Big Help Out:

What is a trustee and how to become one?

The Big Help Out is a voluntary initiative designed to raise awareness of volunteering throughout the UK and provide opportunities for people to experience volunteering and make a difference in their communities. Millions of people took part in the initiative on 08 May, the additional Bank Holiday to mark the coronation of King Charles III, with thousands of events run across the country.

However, the initiative was not isolated to the Bank Holiday; the Charity Commission have teamed up with Getting on Board – a charity which aims to support people from all sectors of society become charity trustees, and charities to recruit and retain a diverse range of trustees – to run a series of **free webinars** throughout the rest of 2023 covering what a trustee is and how to become one.

As at April 2023 there are approximately 100,000 vacancies for charity trustees in the UK, with many charities keen to diversify their boards and have individuals from a variety of backgrounds and skill sets.





Holiday Entitlement and Holiday Pay – the latest!

Back on 20 July 2022, the long awaited Supreme Court judgment in Harpur Trust v Brazel clarified the law in relation to holiday entitlement for Part-Year workers.

The case concerned a Part-Year worker who had a continuing contract but did not work every week of the year. The decision affected employers of Part-Year workers, Zero-Hour workers, Seasonal workers, but not those of part-time workers who are contracted to work every week.

Prior to this case being brought, it had been the accepted wisdom that such employees could be paid a pro rata amount for holiday entitlement, calculated at the 12.07% rate (being 5.6 weeks divided by (52-5.6) expressed as a percentage).

The Supreme Court found, however, that anyone on a Part Year continuing contract was entitled to 5.6 weeks' holiday, not a pro-rated entitlement, despite not working every week in a year. It also found that holiday pay needed to be calculated based on the preceding 52 weeks in which work was performed (i.e., excluding weeks in which it was not performed). This obviously had huge implications for the education sector where Term-Time-Only and other Part-Year working is commonplace.

How did this happen?

Most employers who had Part-Year workers were operating on the “but surely...” principle i.e. anyone working less than full time, whether it be hours per week, days per week or weeks per year must surely be entitled to a pro rata holiday entitlement of their full time counterparts. That, however, is not what the law says!

The Working Time Directive (the original EU legislation) contained the ‘conformity principle’ meaning that anyone working less than full time, be that hours per week or weeks per year, would have a pro-rated entitlement. When the Directive was enacted in the UK as the Working Time Regulations in 1998, this was not included. Therefore, the Regulations state that all workers are entitled to 5.6 weeks’ leave per year. The Working Time Directive does not prevent a more generous provision being made by domestic law.

Thus, the judgment in Harpur Trust v Brazel was a victory for Mrs Brazel who correctly identified this sloppy drafting of the UK legislation.

What happens now?

The current situation is that employees on these types of contract are now entitled to 5.6 weeks’ holiday per year, and there could also be an appetite for backdated claims. Employers have generally chosen either to settle potential claims or put money aside for such claims should they be made. It should be noted that there is a two-year limit on claims for backdated holiday pay (unlike the six-year limit on other deductions from wages claims); however, a “chain” of deductions will be broken if there is three months or more between them.

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, Mrs Brazel's claim has resulted in the Government finally opening consultation regarding proposed new legislation whereby part-year workers' holiday entitlement is pro-rated according to their actual weeks of work. It has only taken them 25 years!

The proposals include calculating a part-year worker's holiday entitlement at the beginning of the leave year by reference to what was worked in the previous leave year.

Consultation closed on 9 March 2023 and the Government is now considering the feedback. As we know, it can take some considerable time for proposed legislation to come into effect.

In the meantime, of course, the Retained EU Law (Revocation and Reform) Bill has been making its way through parliament with the aim of reviewing all EU-derived laws and deciding whether to repeal or retain them by 31 December 2023.

The Working Time Regulations are obviously one such piece of legislation, so we were waiting to see if changes might be implemented via this route instead!

Then, on 10 May 2023, the Government announced that it was abandoning the "sunset clause" in the Bill whereby almost all EU-derived law would be automatically revoked at the end of 2023, unless it was specifically retained. This means instead that EU law will in fact remain in place unless it is expressly revoked.



The Bill will be amended to set out the list of EU law which will be revoked on 31 December 2023 and anything which is not included will stay in place. It therefore remains to be seen whether or not the Working Time Regulations will be on that list!

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



Midlands
Helen Blundell
Director
E: helen.blundell@mhllp.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

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