Summer 2022

Charity Bulletin

UNW's regular update about topics of financial interest to charities and not-for-profit organisations

In conversation with...

Graham Bell

Director of the Cultura Trust

The Charities Act 2022

We reflect on some of the key changes

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Meet the team

Whether you are a registered charity, an academy trust or a not-for-profit entity, we understand your perspective and focus to ensure you do the best you can for your beneficiaries, students or communities.

Our experienced, specialist and multi-disciplinary team can work collaboratively to ensure solutions cover all aspects – including compliance, good governance and tax obligations.

If you have any questions about the topics covered in the publication, please contact a member of the UNW Charity Group using the details below.

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Welcome to our Summer 2022 bulletin.

They say that time speeds up as you get older and that certainly seems to be the case as I can't believe it is almost mid-June already!

In this bulletin, our key feature is an interview with Graham Bell. Graham has been working in heritage restoration and regeneration for over 30 years and is involved in projects both in the UK and across Europe. Over recent months he has been exploring Environmental Social Governance (ESG) on the operations of the organisations he works with so if you are deliberating ESG, net carbon zero or anything else on the sustainability piece, read on. Graham will also be presenting at our next briefing so if you have questions make sure you sign up!

We also look at the changes coming in with the new Charities Act 2022, Paul Tucker from our Employment Taxes team looks at the current focus of HMRC on compliance reviews, and Mark Hetherington warns of changes to VAT filing penalties.

We held our first in person Charity Briefing in over 2 years last month and it was lovely to welcome lots of you to the office to hear our guest speakers talking about the practicalities of Trustee recruitment.

We finish with a few snippets and updates that might be of interest.

Hope to see you at the next briefing in July.

Anne

Anne Hallowell
Charity and Not-for-Profit Partner at UNW

Changes to VAT filing penalties from 2023

Beware of the sting in the tail...

HMRC is proposing changes to the current penalty regime for late filing/payment of VAT returns which in general should be welcomed by VAT registered organisations but they do come with a sting in the tail.

The current penalty regime known as Default Surcharge has been in place for thirty or so years. It has served its purpose well because prior to its introduction there was little deterrent on late filing of VAT returns. However, over the years there has been regular criticism of the mechanical nature of the regime and the unfairness of it due to the fact that the degree of lateness was not factored into the rate of penalty, i.e. if a VAT return was 5 or 105 days late, the penalty would be the same. Importantly though, it only applied to payment VAT returns, with no penalty in place for nil or repayment VAT returns – this is about to change!

Under the proposed changes, HMRC is introducing three potential additional types of charges to replace Default Surcharge:

- Late submission penalties at a fixed rate of £200 per VAT return;
- Late payment penalties based on an initial 2% then 4% charge over the first month, followed by a daily penalty based on a 4% annualised rate;
- Late payment interest of Bank of England base rate plus 2.5%.

These changes do address the previous criticism of unfairness, and the cost (penalty + interest) will now increase by recognising the degree of lateness. However, HMRC is intending that the £200 fixed rate penalty will apply to all VAT returns which are submitted late, including any return which is either nil or for a VAT repayment! This will come as a shock to organisations (such as charities) who are in a regular VAT repayment position and in the habit of submitting VAT returns late.

> The current penalty regime known as Default Surcharge has been in place for thirty or so years.

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Upcoming Charity Briefing:

Sustainability Unwrapped

Date: **Thursday 14th July 2022**

Timings: 4:00pm Arrival and refreshments / Presentation commences at 4:30pm and finishes at 5:30pm (approx.)

Location: UNW, Citygate, St James' Boulevard, Newcastle upon Tyne, NE1 4JE

We are pleased to welcome Graham Bell, Director of Cultura Trust, to set out the challenges in taking a small organisation on the journey towards net carbon zero.

If Sustainable Development Goals (SDGs) and the European Green Deal are the kind of things you think you should know about but haven't got the time, and you think that Environmental Social Governance (ESG) is only relevant to large corporates as it will be years before any of this filters down to smaller entities, then we recommend you come along to this event on Thursday 14th July.

Graham will set out his thinking, his passion for the subject and the challenges in taking a charity board on the journey, to inspire a few more to take those difficult first steps in a changing world.

To register your place, or if you have any queries about the briefing, please contact us at events@unw.co.uk.

In conversation with...

Graham Bell

Director of the Cultura Trust

We recently spoke with Graham Bell, Director of the Cultura Trust, about how he came to be involved with the Trust and his role there, the emergence of sustainability on the Trust's agenda, attracting funding and support for their SDG (Sustainable Development Goals) plan and how he intends to take it forward.

Can you tell us a bit of background about the Trust and your role?

In the 1960s, if you had felt any sense of concern about insensitive development in your area, or that it was so special that you wanted it recognised as a conservation area, you probably would have called upon our charity, established as 'Civic Trust for the North East'. Now, as Cultura Trust, we are still a go-to organisation on all things cultural heritage, but as director I have steered us in paths unthinkable when we began over fifty years ago.

I am only the second director of the charity since 1965. HRH The Duke of Gloucester has been our Patron for 40 years, so being here for the long game is inherent in our make-up. The reality is that change in the places we value is measured in decades and even centuries. My experience has been characterised by resilience in the ebb and flow of the economic environment, from Barings going down in the 1990s, to the financial crisis in 2008, to the pandemic. As a former company secretary once said, the first rule of business, including charities, is to stay in business. That has meant keeping to our principles (why we do what we do) but being adept in anticipating and adapting to societal needs (how we deliver public benefit).

Measuring success – our KPIs – has been about complementary investment in places and people, especially where shifting markets have left both disadvantaged. Picturesque market towns can suffer economic decline as much as city centres or dispersed rural communities. We've worked in all, where historic character may be the USP upon which to rebuild. Being on the board of the £200m Grainger Town Project was a highlight as it was transformational, fundamentally changing attitudes and behaviour as a precursor to achieving and sustaining an uplift in all the things we want from a city. Mentoring groups like the Heritage Centre Bellingham through governance reviews and forward plans is just as important as these are the 'anchor institutions' that underpin tourism, local economy, employment, volunteering and educational access. As an 'alchemist' trying to turn risks into assets, this is my world.

When did sustainability first make it onto the board agenda (and why)?

2018 was a pivotal year. I've worked at a European level for years but that was the European Year of Cultural Heritage for which I was the UK National Co-ordinator. Having 50 countries working together was a remarkable crucible of influences and ideas

Cultura Trust is a cultural heritage charity that's been part of our region for over 50 years. Civil society, heritage champion, entrepreneur, survivor – it's been all of these and more. It isn't living in the past but showing that 'sustainability' can and should be part of our lives and businesses.

> As a former company secretary once said, the first rule of business, including charities, is to stay in business.

> **It still really surprises me how few people in positions of responsibility know of the United Nations' Sustainable Development Goals (SDGs).**

in which the sense of what makes us all European within a global context was explored. Since the financial crisis of 2008, the word 'regeneration' has largely dropped out of the vocabulary; ten years on, 'sustainability' was emerging as the more eco-friendly, holistic, inclusive, responsible way of doing things. Whereas regeneration was often the tagline of European or government funding programmes, sustainability seemed more of a sentiment with less definable investment objectives; how do you measure sustainability? Arguably, the Trust had championed sustainability all its life through keeping historic places economically and socially vibrant, but somehow this was different – not just common sense but an emerging ethos. Therefore, though I could introduce the principle in our three-year forward plan, it was work in progress as to how it would turn out in practice. For over fifty years our points of reference had been the familiar aims of conservation of heritage and the traditional skills upon which it depends, but now we were looking at impact across a much wider range of indices; 'sustainability' was not just maintaining the status quo but recognising a conscientiousness that all we do (or don't do) has a much wider impact – people, place and now also, environment. For a 'conventional' charity rooted in continuing traditions, that was quite a challenge!

What were your first steps in looking at the environmental (/sustainable) credentials of the Trust?

It still really surprises me how few people in positions of responsibility know of the United Nations' Sustainable Development Goals (SDGs), which means fewer think they are relevant, and hardly any have linked them directly to their business plans and involved their people. Have you? This is not just about changing light bulbs; it is about the interconnectedness of life, of managing cause and effect way beyond the water cooler or balance sheet. The UN published the SDGs in 2017, of which there are 17 containing 169 target actions by which we can measure and therefore manage our environmental/climate impact. Not all are within reach of all of us, but 'none of the above' is not a valid response.

Our challenge in 2018 was partly about changing the culture of our organisation: the SDGs were not an obvious progression of day-to-day planning policy, conservation or traditional skills. It made me realise how so many organisations use 'next step' forward planning rather than objective-driven strategies. The challenge was even greater for a small charity having limited resources than what is expected of large corporate organisations for whom directors and shareholders would go beyond operating procedures' due diligence into the added value of environmental/climate responsibility. When the pandemic caused lockdown, Cultura took the opportunity to benchmark our SDG performance at an organisational level and at three of our properties, and, in what seems to be unprecedented, set forward planned KPI targets.

As if that was not enough, through my European roles, including as board member of Europa Nostra, Europe's largest and most influential cultural heritage NGO (Non-governmental Organisation), I was involved in a response to the European Commission's 'European Green Deal'. Whereas the SDGs encompass all aspects of a sustainable society, the Green Deal is a road map to implementing urgent priority climate action carbon reduction targets by 2030. As it identifies a need to upgrade 35 million buildings in the next 7-8 years, it was clearly something Cultura ought to be taking on board, as specialist advisor and property owner.

How easy was it to attract support, and more importantly funding?

If the subject is unfamiliar territory, funders and partners also find it peripheral to their core priorities. Cultura could see that the aberration of the pandemic and access to abnormal funding was an opportunity to grab. The Culture Recovery Fund supported our ambition to produce an SDG Plan as the pandemic itself was raising fundamental questions about working patterns, travel, tourism and all those things which determine the sustainability of a way of life and the infrastructure we had assumed was unshakable. From what I can see, Cultura remains an exception in having done so. Exceptions can attract funding but also risk; we need to hold our nerve and course, though it would be reassuring if others joined us.

What are the next steps for you and the Trust to take this forward?

I've said the world of SDGs seems to be the preserve of large, well resourced, often multi-national, corporates, or niche sector specialists (though I don't think of Cultura being the latter). It may be a cliché to think we are ahead of the curve but as I haven't yet found other organisations with the same commitment, I think we are, though going off piste is not new for us: in the 1980s we were by combining a 'civic trust' role with acquiring and rescuing historic buildings at risk, and subsequently in our Heritage Skills Initiative, which was an award-winning response to the (still) worrying shortage of people taking up traditional trades, and more recently through our European work. Our mill near Carlisle was selected by the Council of Europe as an example of putting sustainability into practice in a circular economy. Given we own a chunk of the transnational Frontiers of the Roman Empire World Heritage Site, we were the only UK participant in undertaking a sustainability audit, indexing the values of the site against the SDGs, comparing them among 60 global organisations from every continent. Currently we are doing a scientific audit on our watermill at Hawes to test its energy/carbon performance with plans to make it an exemplar of how to achieve better than carbon neutral.

But perhaps the newest challenge is one even fewer people have heard of or are adopting: Environmental Social Governance (ESG) takes the principles of the SDGs and integrates them into the way organisations are managed and operate. So far, evidence of this is mainly at the macro scale: HSBC, Virgin, European Investment Bank. We can't wait for this to percolate down to SMEs and NGOs; my aim in 2022 is to take Cultura across this threshold.

What do you think the biggest challenge will be in implementing the plan?

A bugbear of mine for years has been the silos we insist on operating within. As we progress in our working life, many of us specialise, but that intensity often leads to loss of contextual vision – the woods and trees risk. The pandemic has broken our stride and revealed that many of what we assumed were the 'givens' of life actually could change, even for the better. Curious admiration for Greta Thunberg and changing our own lifestyle may have been an unfulfilled gulf, but now, almost by default, it has become partially attainable and even rewarding. As we are creatures of habit, the biggest challenge is whether in the next three years we look at the pandemic as being an aberration ('post-COVID') or a change of tack. Cultura has never known comfortable financial security, perhaps because we relish being entrepreneurial more than maintaining a status quo, so for us the challenge is whether our faith in sustainability leads us into new working relationships.

For more information about the Cultura Trust, please visit www.culturatrust.org

HMRC Compliance Reviews:

On the increase!

What is the background?

HMRC undertake reviews to ensure employers are complying with their tax and National Insurance (NI) obligations.

Historically, employers could have been selected at random, usually every six years or so, and HMRC would often visit employers' premises to carry out their review.

HMRC now adopt a risk-based approach to deciding which employers to review. They use data available to them to focus on those they consider are most high risk, and they may undertake reviews more frequently. For example, late returns or payments by an employer may result in a review. Employers now usually receive a letter and questionnaire from HMRC to complete, rather than receiving a visit. HMRC will then interrogate the answers and ask supplementary questions.

What is the issue?

If HMRC identify any errors, they will pursue the employer for the tax and NI liability. Those liabilities, which include interest and potential penalties of up to 100% (200% for National Minimum Wage failures), are often substantial as HMRC may seek liabilities for up to six years.

In addition, if a taxable benefit, such as a company van, has been incorrectly dealt with, HMRC will usually calculate the liability using a taxpayer's highest marginal rate of tax on what is known as a grossed-up basis. For a 40% taxpayer that calculation method equates to an effective tax rate of almost 90%. A van benefit for a 40% taxpaying employee that has not been included on a P11D would result in an employer liability of over £20,000, taking into account the previous six years (plus interest and penalties on the liability).

Tax and NI legislation is complex. Some of the current hot topics and danger areas include:

Status of workers

HMRC will look closely at any worker who is not on the payroll and subjected to PAYE.

Coronavirus Job Retention Scheme (CJRS)

Given the multiple changes to the rules over the period of the CJRS and the options available to employers, HMRC are of the view that significant overclaims many have been made.

NMW

Mistakes often arise in respect of deductions from wages, not just payments at the wrong rate. With a potential 200% penalty and HMRC's naming and shaming regime, a mistake may not only give rise to a substantial liability, but also reputational damage as well.

Termination packages

HMRC are likely to focus on notice pay and the application of tax exemptions.

Company cars

Common mistakes are in relation to list price, accessories, C02% and the treatment of private fuel. In addition, if an employer offers a cash alternative, this may have an impact on the taxable benefit.

Company Vans

HMRC will review vans not shown on P11Ds and also check whether any should be cars for tax purposes.

Pool vehicles

It is not easy to satisfy the conditions for pool car treatment. HMRC will check to see that all are met.

Salary sacrifice

There could be a significant liability if a mistake has been made where a lot of employees will have taken part, for example pension salary sacrifice.

Staff entertaining and gifts

HMRC will look to see that the correct exemptions have been applied and taxable benefits have been shown on P11Ds or PAYE Settlement Agreements.

Payment of tax and NI free allowances

Employers will need to explain to HMRC why they consider the allowances, which for example may be for subsistence, are paid free of tax and NI.

What do employers need to consider?

Employers need to:

- Be ready for any HMRC review;
- Manage their risk;
- Identify any areas where they have a concern;
- Consider if they need to approach HMRC to disclose any errors, before HMRC contact them; and
- Ensure they are able to explain to HMRC why they have adopted a particular approach.

How can UNW help?

As soon as HMRC contact an employer about a review the opportunity to make a disclosure and potentially reduce any penalties to zero is gone. The ideal scenario to minimise penalties is to undertake a review, then make any disclosure to HMRC before they make contact.

Our employment tax specialists have expertise in Employer Compliance Reviews. They regularly undertake reviews (effectively mock HMRC reviews) for clients. However, unlike an HMRC review, our review will also identify tax planning opportunities and strategies to minimise risk.

Our reviews typically proceed as follows:

- An on-site meeting;
- Completion of a questionnaire, similar to HMRC's, and a discussion in respect of potential areas of risk;
- Clarification of points and quantification of potential liabilities;
- Feedback report; and
- Disclosure to HMRC, if necessary.

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Recruiting Trustees
'A practical guide'

Following on from a virtual event in March 2021 ('Strengthening Your Board') which looked at the changes to the Charity Governance code, UNW held a Charity Briefing focusing on the recruitment of trustees at its Newcastle city centre offices on the afternoon of Wednesday 4 May 2022.

The event brought together case studies from the sector that highlighted how organisations identifying a need for new skills have successfully filled those gaps.

Hosted by Anne Hallowell, Charity and Not-for-Profit Partner at UNW, we also heard from Catherine Marchant, Owner of C Marchant Consulting and Founding Trustee of BSignificant, who gave us her 'top tips' on recruiting trustees and some examples of what has worked and what has not from over 26 years of experience.

Colette Harrison, Development Officer, Sector Support at Community Foundation Tyne & Wear and Northumberland, spoke on the importance of being clear on what you need in order to attract the right skills and highlighted the Foundation's Trustee Match offer.

Peter Nailon and Dan Britton from the Wear Rivers Trust gave their different perspectives as a Chief Exec looking to attract new board members, and a new board member seeking a fulfilling role.

The floor was opened for a healthily long question and answer session before attendees took part in a final bit of networking and the event was concluded.

If you would like to share your ideas for future workshops and seminars, please email us at events@unw.co.uk

Virtual Trustee meetings

If you have been using the emergency provisions introduced by the Charity Commission regarding holding virtual Trustee meetings, where your governing document did not allow for this, then these provisions came to an end on 21 April 2022. You should now revert to face-to-face meetings or take steps to amend the governing document to allow you to work as you wish going forwards if returning to full face to face working is no longer practical.

Full guidance can be viewed here:

https://www.gov.uk/guidance/coronavirus-covid-19-guidance-for-the-charity-sector#meetings

What's on the horizon for charity Trustees?

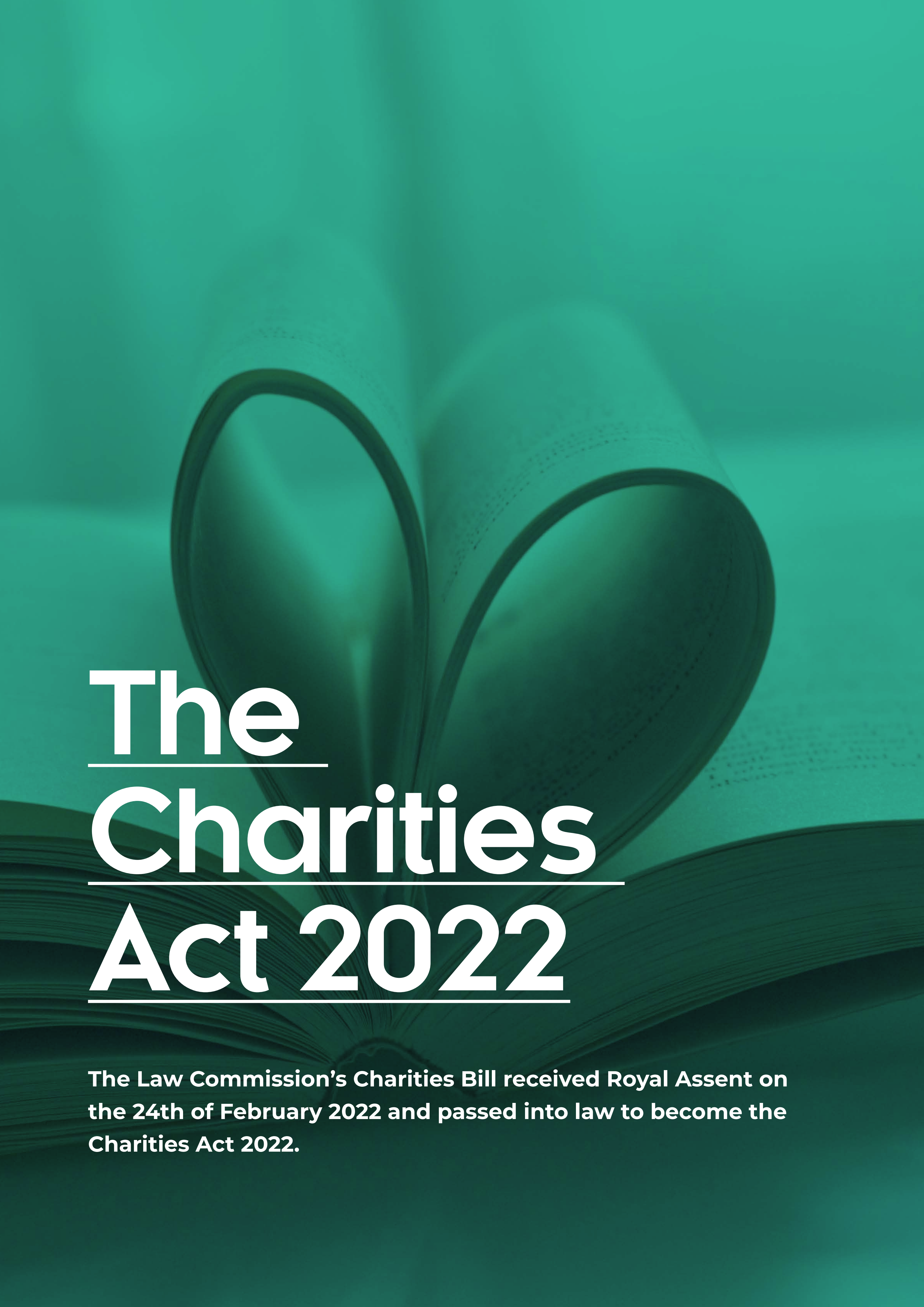
Charities Aid Foundation and ICAEW have published a report looking at the challenges faced by charities and their trustees, based on interviews with a wide cross section of trustees.

The report can be downloaded here:

https://www.cafonline.org/docs/default-source/charity-finance-and-fundraising/caf_icaew_trustee_research_final-(1).pdf

The key areas highlighted, which won't come as any surprise, are:

- Financial resilience
- Cyber crime
- Inflation
- Covid
- Brexit
- Climate change
- Mental health
- Political complexities
- Digital transformation
- Evolution and continuation



The Charities Act 2022

The Law Commission's Charities Bill received Royal Assent on the 24th of February 2022 and passed into law to become the Charities Act 2022.

This new Act, to be implemented over the next year and a half or so, makes technical changes to the law governing charities with the intention of allowing them to run more efficiently through giving more power to trustees and cutting bureaucracy.

Key changes:

Amendments to governing documents

Unincorporated charities and trustees will be able to amend their governing documents more easily – remaining subject to the Commission and the Privy Council's approval in certain circumstances.

Sale of Land

Charities will have access to a much wider pool of professional advisors on land disposal, and to more straightforward rules on what advice they must receive.

Permanent Endowment

Charities will have more flexibility to make use of a 'permanent endowment' – this is money or property originally meant to be held by a charity forever. The new powers allow borrowing from permanent endowment and using it for social investments rather than investing it for financial return.

Paying Trustees for goods provided to a charity

Trustees will be able to be paid for goods provided to a charity in certain circumstances, even if not expressly stated in the charity's governing document (currently trustees can only be paid for supply of services). This will allow charities the flexibility to access goods from trustees when it is in the best interests of the charity, without needing Commission permission.

Failed Fundraising Appeals

Charities will be able to take advantage of simpler and more proportionate rules on failed appeals, allowing easier repurposing of small donations.

'Ex gratia' payments

These payments (where a charity makes a payment that does not support its aims, but which they feel is morally right) are currently subject to strict rules which will be relaxed so that approval from the Charity Commission on certain small 'ex gratia' payments will no longer be required.

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Unlike others
Find out how at unw.co.uk