Welcome to the latest Not for Profit newsletter from PKF Littlejohn. Our aim is to pull together current sector news, issues and opportunities in an easily digestible format for everyone involved in the financial, governance and strategic side of running a not for profit organisation.

The Charity Governance Code is changing

A joint consultation on the charity sector Governance Code, undertaken by the Charity Commission for England and Wales, ACEVO NCVO, ICSA, Small Charities Coalition and WCVA, closed on 3 February 2017.

Governance is the process through which charities are directed and controlled, to ensure that they deliver sustainable public benefit and comply with all legal and regulatory requirements. Good governance has arguably never been more important than it is now. Increased public scrutiny over the charity sector in the wake of several high profile news stories in recent years - coupled with increased regulatory powers of the Charity Commission - mean that there are greater consequences of ‘getting it wrong.’

The Code was originally created in 2005, as a tool to support and encourage good governance, and a second edition was published in 2010. The Code’s name will change from ‘Good Governance: A Code for the Voluntary and Community Sector’ to ‘The Charity Governance Code’. The revised Code is likely to come into place in 2018.

Key changes within the new Code include:

- More detail on what is expected in practice, so the Code can be used as a tool for continuous improvement. There are recommendations, for example, around board size, performance reviews and trustees’ terms of office.
- Guidance on which elements of the Code are applicable to larger, more complex charities – thereby seeking to ensure that the Code is sufficiently rigorous for larger charities but also flexible enough to be useful for smaller charities. Larger charities are, for example, encouraged to publish a statement in their annual report setting out how they apply the Code.
- The introduction of a ‘Foundation Principle’ that sets out the basic legal and regulatory compliance requirements for all charities. Central to this is the need for trustees to understand their roles and legal responsibilities, with particular reference to the Charity Commission guidance ‘The Essential Trustee’.
- A greater emphasis on values and behaviours - recognising that governance is about much more than systems and processes, and not just about the trustees. The correct behaviours must be embedded throughout a charity for effective governance.
- A new principle around diversity, bringing together these issues under one heading for the first time in the Code. Boards are encouraged to recognise diversity in its widest sense and to use this as a tool to drive more effective and balanced decision-making.

Although the consultation on the new Code has now closed, the proposed Code is available to view and **download**. We encourage charity trustees to familiarise themselves with the new Code and to think about how the governance processes at their charity compare – and whether any changes are needed in light of this new guidance.

If you require any further advice about how to prepare for the new Governance Code, please contact **Karen Thompson** at kthompson@pkf-littlejohn.com or +44 (0)20 7516 2477.

Forthcoming seminars

Visit www.pkf-littlejohn.com/events for more information.

Tuesday 7 March 2017, 4.30pm
Survey of Membership Organisations 2017: Report launch
Our fourth annual survey of membership organisations looks at the issues that will affect the sector in 2017.

Thursday 15 March 2017, 8.30am
Not for Profit Tax Round Up
An update on all of the latest tax matters affecting the sector.

Wednesday 26 April 2017, 8.30am
Gift Aid seminar
Stay up to date with the latest changes to Gift Aid rules.

Wednesday 7 June 2017, 8.30am
VAT strategic opportunities briefing
Practical advice to help you maximise your charity’s VAT recovery without putting at risk existing relations with HMRC.

Want to attend? RSVP to Keeley Ratford at kratford@pkf-littlejohn.com

Domain name fraud – what are the risks?

Two new scams are currently being targeted at organisations unfamiliar with the domain name registration process.

The Intellectual Property Office (IPO), in an article published earlier this month, explains two recent scams. In the first, fraudsters send an invoice for payment for the renewal of an existing website domain. They will search domain registration databases to find domains that will soon be up for renewal; they can actually find out the exact renewal date. They then send an official-looking invoice to the domain's billing contact. The fraudster hopes that the recipient won't notice that the invoice isn't from their preferred domain registrar and will blindly pay it.

The fine print often notes that, by paying the invoice, the organisation is agreeing to transfer the domain from their preferred legitimate registrar to the fraudster. So not only is the organisation out of pocket, but it may have also contractually locked itself into paying that the fraudster's registrar for future renewals.

A second domain name scam highlighted by the IPO involves the victim being contacted by phone from someone claiming to be from the 'Trade Marks Intellectual Property Office'. Their aim is to panic people into buying unnecessary domain names at grossly inflated prices.

Brand protection is extremely important to not for profit organisations. The law in many countries informs brand owners of the need to register a domain name, or the organisation may lose the right to protect it in the future. Fraudsters play on this, by suggesting that someone is trying to register a domain with the organisation's name and then use high pressure sales tactics to make the victim purchase overpriced domain names that are not needed.

Consider a fictional charity 'Helping the Endangered Diana Monkey' to demonstrate what happens. Being a charity, the main domain the charity may have chosen could be dianamonkey.org and to protect the brand, the charity may have pre-emptively registered dianamonkey.net, dianamonkey.org, dianamonkey.com and dianamonkey.co.uk. After the fraudster has done some research, the charity would be told that an organisation with a similar name was trying to register a domain name in, say, China and would be offered a package of Asian domain names that would include dianamonkey.org.cn, dianamonkey.cn, dianamonkey.net.cn and other such Asian addresses. The fraudsters exploit your unfamiliarity with that country's laws in order to get you to register the name via their registrar at inflated rates.

If you require any further advice about protecting your organisation against a fraudulent attack, please contact **James Earp** at jearp@pkf-littlejohn.com or +44 (0)20 7516 2479, or **Martin Moore** at mmoore@pkf-littlejohn.com Tel +44 (0)20 7516 2320.

Data Protection – are you protected?

Charities rely heavily on personal data relating to beneficiaries, donors and other stakeholders. But many organisations face serious challenges regarding the capture, processing and securing of this information.

What are the penalties for getting it wrong?

Both the risks and the likely penalties for suffering a data loss are increasing. The Information Commissioner (ICO) stated recently that organisations need to rethink their approach to data protection and is backing up this warning with decisive action.

In total, 36 organisations were collectively fined £2 million in 2016, up from 9 fines totalling £668,500 two years earlier. And don't think that these large penalties are levied only on corporates: as part of 'Operation Cinnabar', the ICO's inquiry into charity fundraising practices, 11 charities were issued with notices of intent to fine earlier this month.

The difficulty for most charities is that they typically have limited financial resources and relevant expertise, and the focus is almost certainly on fundraising and the provision of services. But none of that will count as mitigating factors if you suffer a data breach or use personal information inappropriately.

How are the rules changing?

All personal data held by any organisation for any purpose is governed by the Data Protection Act 1998 (DPA) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). However, there is a new EU Directive, the General Data Protection Regulation (GDPR), which is due to come into force on 25 May 2018. The GDPR increases the size of the fines that can be levied in the event of a data breach or non-compliance with the Directive to as much as 4% of the annual worldwide turnover of an organisation or €20 million (whichever is the greater). This is enough to put most charities out of business.

IT strategy – a practical guide

25% of all IT projects fail completely and only 25% get somewhere close to delivering their intended benefits. A non-existent or ineffective IT strategy is usually to blame.

Our 'IT strategy: a guide for charities' provides practical guidance on how to produce an IT strategy for your charity and highlights how to avoid some of the all too common pitfalls.

Download the guide.

What can you do?

There are a number of steps you can take to minimise the risk of your charity suffering a data loss or using information inappropriately.

- Security and confidentiality of data must be at the heart of your IT decision-making, not just an afterthought.
- Ensure you have explicit consent for storing and using any personal information for the specific process you wish to use it for.
- Encrypt confidential data. The ICO has said categorically that it will not accept any excuse for a data breach if the data were not encrypted, regardless of any other measures in place.
- Make sure you know what data you're capturing, where it is stored and how it is protected. Take particular care before entering into agreements with third-parties for data storage and processing, such as specialist emailing services or outsourced data centres. Remember that you are responsible for your data at all times, regardless of where it is located or who is processing it.
- Ensure you have well-defined policies and procedures that are communicated regularly to all relevant personnel regarding both the security and use of personal information.
- Commit to an independent review of your measures and policies on at least an annual basis to identify issues and gaps.
- As a general rule, don't do anything with data unless you are certain that it is appropriate and secure to do so.

If you require any further advice about data protection, please contact **Ian Singer** at isinger@pkf-littlejohn.com or +44 (0)20 7516 2200.

Charities to be exempt from Making Tax Digital rules

Following the consultation into the Government's Making Tax Digital plans, which paves the way for substantial changes to the manner in which organisations account for tax, HMRC has announced that charities and community amateur sports clubs will be exempt from the new digital record keeping requirements. This exemption, however, does not extend to trading subsidiaries of charities; they will be required to comply with the changes, which includes providing quarterly updates to HMRC.

Whilst the exemption is welcome news for charities and community amateur sports clubs, there are likely to be further announcements affecting charity trading subsidiaries before the new system goes live.

For more information on the latest developments in this area and the likely impact upon your organisation, please contact **Sarah Kelsey** on skelsey@pkf-littlejohn.com or +44 (0)20 7516 2298.

What do you need to know about forthcoming PAYE changes?

There a number of PAYE issues that not for profit organisations should have on their radar, including:

- The Finance Bill 2017 will include legislation setting the time limit for making good a non-payrolled benefit in kind at 6 July following the end of the tax year, and effective from the tax year beginning 6 April 2017.
- Budget 2017 will include a consultation on the valuation of employer-provided living accommodation benefits in kind for tax purposes, and more generally on all other benefits in kind.
- Employer-arranged pensions advice, up to a value of £500, will be exempt for tax and NIC purposes under legislation to be included in the Finance Bill 2017 and will be effective from 6 April 2017.
- With effect from 6 April 2017, the benefit in kind taxable values of employer-owned assets made available for the private use of employees will be based solely on the period of time they are available to the employee. Previously, employees could be taxable on an annual value of the benefit even if it was not available for the whole of the tax year.
- The tax and NIC advantages of a large number of Salary Sacrifice Benefit in Kind arrangements will be removed with effect from 6 April 2017. Arrangements involving pensions, childcare, cycle to work and ultra-low emission vehicles (ULEVs) are exempted. Transitional arrangements will come into force for benefits provided under terms established before 6 April 2017, with a final cut-off date of April 2021 for ULEVs, accommodation and school fees, and April 2018 for all others.

- Guidance on the application of the new Trivial Benefits in Kind exemption is available on HMRC's website. The impact of this new legislation on annual PSA computations could result in significant savings for employers.
- Voluntary Payrolling of Benefits in Kind (PBIK) was introduced with effect from 6 April 2016, and has now been extended to include non-cash vouchers and credits tokens. Living accommodation and beneficial loans continue to be excluded from PBIK. Employers payrolling car and car fuel benefits from 6 April 2016 are not required to report information about these benefits on forms P46 (Car) and P11D.

  From April 2018, information on these benefits will need to be reported in the employer's Full Payment Submission (FPS), although employers can voluntarily start using FPS for this purpose from April 2017, providing their payroll software is compatible.
- Reform of tax and NIC on termination payments is scheduled to take effect from 6 April 2018, with draft legislation to be included in the forthcoming 2017 Finance and NIC Bills.

For more information about changes to PAYE and NIC, please contact **Ian Gadie** on igadie@pkf-littejohn.com or +44 (0)207 516 2256.

Pressure test your Chair–CEO relationship

At a recent workshop, governance specialist Tesse Akpeki discussed ways that not for profit organisations can help improve the effectiveness of their Chair-CEO relationships. Here are Tesse's practical tips:

Appreciation: Don't forget to say thank you – this applies to the CEO, the Chair and the Board.

Prioritise: The CEO and Chair as strategic partners should figure out how their partnership will work efficiently and effectively. Performance frameworks play a big part in this, as do the personalities and styles involved. It is important to set goals and milestones.

Practice gentle leadership: Both partners should be gentle and supportive of each other while achieving the necessary outcomes. This involves being sensitive to the needs of the opposite partner – the Chair (who has the delegated authority of the Board) and the CEO (who is at the helm of supporting the staff and works closely with the Executive). It is a delicate balancing act. Gentle leaders are generous listeners, facilitators and collaborators – all virtues that are important for effective team building and maintenance.

Have the sensitive/difficult conversation: It is crucial not to avoid difficult or sensitive conversations. The situation will only get worse. Together work out smart ways of achieving results and overcoming any challenges or barriers.

Pay attention to competences and capabilities: Are the necessary resources available to meet the challenges with which the organisation is faced? The resources can go beyond finance to the skills or conditions needed to make sure that there will be successful outcomes. The CEO and Chair can ask each other 'what can help you to get to where you need to be?'.

Performance appraisals: Build in coaching and mentoring approaches. What can help each partner to have perspective of everyone else's objectives? What is keeping each of them awake at night? What can bring reassurance?

Reflection works: Each player should consider 'checking in' with him or herself. Sometimes this takes the form of self-reflection. It could also take the form of being part of a Chair or CEO group, or getting a coach or mentor who can bring added support.

Involve the whole team: Both the Board and the staff. Team norms encourage more engagement and ownership of standards, values, what needs to be achieved and how. Codes of conduct are a great help as a starting point. The collective wisdom of the team can bring more productive ways of working and contributing. Find ways of celebrating success and recognising effort and contributions.

When all else fails: If the relationship does not work, it may be time to bring in a third party to facilitate conversations and see if a shared vision of the work and way of working can be agreed. The removal of either the CEO or Chair should be the last resort.

For more information about best practice governance, please contact **Ian Mathieson** on imathieson@pkf-littejohn.com or +44 (0)207 516 2475, or **Tesse Akpeki** on +44 (0)7931 781 242 or visit **her website**.

Restaurant and theatre services provided by educational establishment not VAT exempt

The Advocate General (AG) has released her opinion in the Brockenhurst College case, and the decision could have implications for educational establishments that provide other services alongside exempt education.

Brockenhurst College ran educational courses in catering/hospitality and performing arts. As part of their training, students on these courses were able to run the college restaurant and put on theatre shows for third parties in return for payment. The issue at stake was whether the supplies of restaurant and theatre services to paying third parties through the educational establishment could qualify as 'closely related' to supplies of education, and therefore be exempt from VAT.

The AG determined that closely related transactions are independent supplies, which do not include the supply of restaurant and entertainment services by an educational establishment to paying members of the public and who are not recipients of the exempt educational services. The AG referred to a number of relevant factors she considered when reaching this outcome, one of which was the fact that the third parties paid for their own consumption, not for the provision of education to the students.

If the Court of Justice of the European Union follows the AG's opinion, educational establishments may need to account for VAT on restaurant and entertainment services supplied alongside exempt education.

For more information on helping you pay the right amount of VAT, please contact **Luigi Lungarella** on llungarella@pkf-littejohn.com or +44 (0)207 516 2228.

Did you know…

The PKF Littlejohn Not for Profit team has continued its success in building its relationship with EU institutions through our appointment as auditors to ten EU agencies and joint undertakings. These organisations are separate legal bodies, set up to perform specific tasks, though they are consolidated into the overall accounts of the EU. In total there are over 40 such organisations, located across Europe.

In the last two years the team has audited organisations with annual budgets ranging from €10m to €1bn. The annual accounts are prepared under EC accounting rules which are drawn from International Public Sector Accounting Standards, yet another framework for partners and staff to familiarise themselves with.

The annual accounts are individually presented to the European Parliament by the European Court of Auditors (ECA). The ECA provides two opinions – one on the legality and regularity of transactions and a second on the reliability of the annual accounts. It is the latter opinion where the ECA relies on our work.

Each entity must produce provisional accounts (to 31 December) and submit these to DG Budget, essentially the EC's accounting department, by 1 March each year. We are then required to provide our opinion on the provisional accounts by 31 March – quite a tight turnaround.

Over the next few weeks we will have teams in Vigo, Turin, Helsinki, London, Frankfurt and, of course, Brussels, carrying out these audits.

We hope you've found this issue useful. If members of your team or your trustees would like to receive future issues, please send their details to Keeley Ratford (kratford@pkf-littlejohn.com).

Our specialist team is here to help. If you would like advice on any of the issues discussed in this newsletter, please contact one of our Not for Profit specialist partners.

PKF Littlejohn LLP
1 Westferry Circus
Canary Wharf
London E14 4HD
Tel: +44 (0)20 7516 2200
pkf-littlejohn.com

NOT FOR PROFIT

IAN MATHIESON
Partner
E: imathieson@pkf-littlejohn.com
T: +44 (0)20 7516 2475

KAREN THOMPSON
Partner
E: kthompson@pkf-littlejohn.com
T: +44 (0)20 7516 2477

ALASTAIR DUKE
Partner
E: aduke@pkf-littlejohn.com
T: +44 (0)20 7516 2285