



Charities Sector Update 2023

21 September 2023



Agenda

Governance update	Sally Knight, MKS Associate
Legal issues affecting charities	Paul Ridout, Legal Director, Moore Barlow
Fundraising and charity strategy	Dan Fletcher, Director, Moore Kingston Smith Nonprofit Advisory
Tackling the charity cyber threat	Maritz Cloete, Director, Moore ClearComm



Governance update

Sally Knight, Moore Kingston Smith Associate



Charity Governance Code

Charity Governance Code

Home

About the Code -

Foundation: the trustee role and charity context

1. Organisational purpose

2. Leadership

3. Integrity

4. Decision making, risk and control

5. Board effectiveness

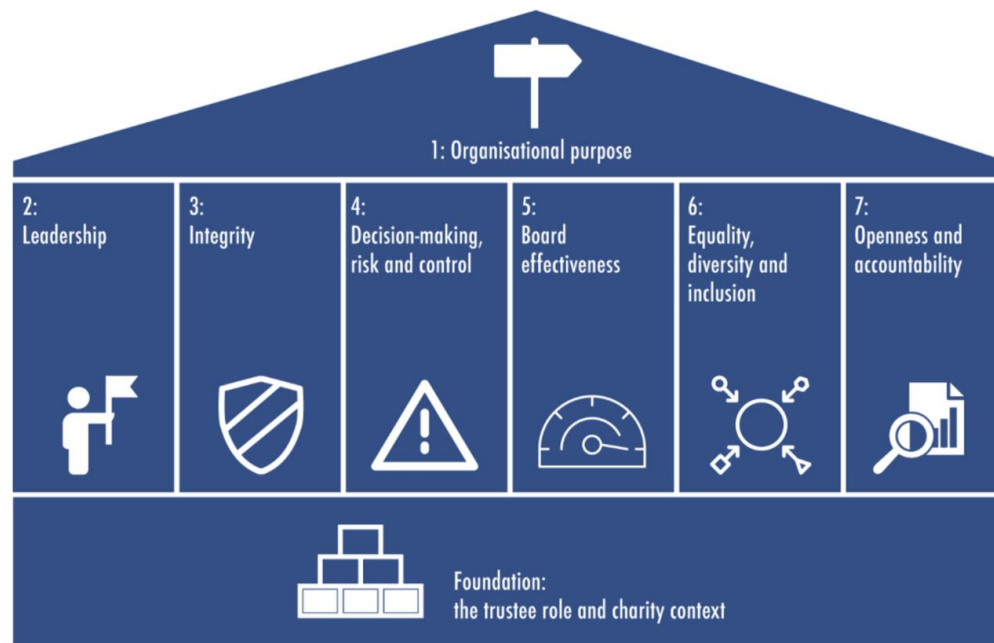
6. Equality, diversity and inclusion

7. Openness and accountability



The principles

There are seven principles which make up this Code. These seven principles build on the assumption that a charity is meeting its legal and regulatory responsibilities as a foundation.

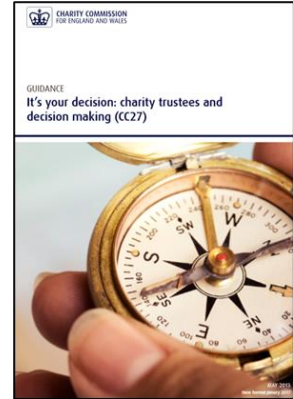


- **Behaviour and decision-making**
 - Conduct and values – ‘tone from the top’ and the Board’s relationship with staff team
 - Decision-making - CC27 is a helpful reminder
 - Conflicts of interest / loyalty – policy and practice
- **Up to date delegation framework**
 - Drives Committee structures and ToRs
- **Risk management and risk appetite**
- **Financial and investment governance**
 - Responding to the new Annual Return questions
 - Role of the updated CC8 guidance and checklist
 - Embracing the revised CC14 guidance
 - Due diligence around corporate partnerships / gifts / ex gratia payments

Making effective decisions

Principle 4, of the Charity Governance Code states that: *'The Board makes sure that its decision-making processes are informed, rigorous and timely, and that effective delegation, control and risk-assessment, and management systems are set up and monitored.'*

- How do you ensure that your charity's trustees make appropriate and effective decisions?
- Follow the basic principles in **CC27 and legal requirements**.
- CC27 helpful when taking 'difficult' decisions e.g. strategic / structural decisions; investment policies; donation acceptance; restitution
- Ensure clarity of the **matters reserved for the Board**, what can and should be **delegated**, and the **accountability** back to the Board
- Ensure that Board agendas and papers make clear what is expected of the Board, and that minutes accurately and fairly record the decision and decision-making process



Trustees always
retain ultimate
responsibility

The Charity Commission for England and Wales



CHARITY COMMISSION
FOR ENGLAND AND WALES

We're going to look at:

- CC's 5-minute guides
- Charity Annual Return 2023
- CC8: Internal financial controls
- CC14: Investing charity money

Plus:
New social media
guidance issued
18.9.2023

CC's 5-minute guides for trustees

- Delivering purpose
- Managing finances
- Conflicts of interest
- Making decisions
- Reporting information
- Safeguarding people
- Political activity and campaigning by charities



Full **CC9 Guidance updated Nov 2022**
for the Elections Act 2022 – also includes
guidance about elections and referendums

Charity Annual Return 2023

- The Annual Return for 2023 has been revised, with new questions
- **Familiarise yourself with the questions** - leave enough time to collate and check the responses
 - [Charity Annual Return 2023: question guide - GOV.UK](#)
 - [Charity Annual Return 2023: glossary - GOV.UK](#)
- A 'My Charity Commission Account' login is required to submit the 2023 Return
- Good practice to periodically look at your charity's entry on the Charity Commission Register – what information is being publicly disclosed?

- The Annual Return is an online form that *all* charities with annual incomes of £10,000 or more (and *all* CIOs) must complete within 10 months of the end of their financial reporting period

Charity Annual Return 2023: Governance

New section 8 Governance requires charities to tick any / all of the policies and procedures in place at the end of the financial period covered by the Return from a list of 13 which includes:

CC 'expects':

- Internal charity financial controls
- Financial reserves
- Trustee expenses
- Trustee conflicts of interest
- Risk management
- **Serious Incident Reporting** (links to **AR Section 9.2** – new, but only asked if applicable)

And likely to also be needed:

- Investing charity funds
- Engaging in campaigns and political activity
- Bullying and harassment
- **Safeguarding** (links to **AR Section 9.1** – new)
- Complaints
- Engaging external speakers at charity events
- Social media (CC guidance issued 18.9.2023)

Can you lay your hands on these policies for your charity? Are they up to date, reviewed and approved appropriately? Links to your charity's 'Matters reserved for the Board' and delegation framework to Committees, staff etc.

CC8 Internal financial controls

Guidance and checklist (updated April 2023)

- The Guidance reminds trustees of their responsibility for their charity's financial management and for implementing and monitoring their charity's internal financial controls, even if the detailed work is delegated
 - Reminder of general controls principles applicable to all charities
 - Updated section on operational risks and examples
 - Internal control 'basics' for key areas
- How should you use the Checklist?
- How do you / the Board know the controls listed are actually effective, and working in practice?

Internal financial controls for charities (CC8)

Operational risks:

- Fraud and cybercrime, including loss of personal and financial data
- Requirement to comply with UK GDPR and other relevant legislation
- Challenges when operating overseas
- Corruption and bribery
- Signposting to additional CC guidance, and highlights the key policies the CC would expect to be approved and in place

Internal financial control 'basics' for:

- Banking, incl. online banking
- Income, incl. online donations
- Crypto-assets – new section
- Expenditure, incl. mobile payment systems
- Payments to related parties
- Assets and investments, incl. intangible assets
- Loans
- Hospitality including gifts
- Internal (and external) audit functions; ACs

CC14 Investing charity money: guidance for trustees (updated August 2023)

Investing charity money: guidance for trustees (CC14) - GOV.UK

- CC14 explains what trustees need to know and do to make financial and social investment decisions in line with their trustee duties
- Accommodates the 'Butler-Sloss' judicial review outcome (2022)
- CC14 now has a simpler structure and is easier to interpret; shows how to consider 'ethical' factors as part of the trustees' investment approach, whilst also considering financial return
- Uses simpler language to describe 'social investments'
- Highlights the need for trustees to consider taking advice (or be clear why it isn't needed, and keep a record of that), and to be prudent

Keep investments and investment approach under regular review, have a robust investment policy, and record trustees' decision-making processes and outcomes

Update: UK GAAP for charities (Generally Accepted Accounting Practice)

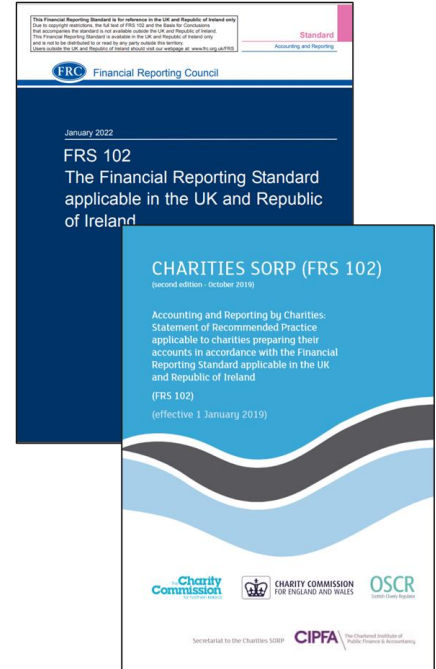
For charity accounts showing a 'true & fair view', the two key 'ingredients' are currently:

1. FRS 102 (Jan 2022)

- Underpins charity (and other) reporting in the UK
- Awaiting publication of the revised FRS following the consultation on FRED 82
 - What did the sector think?
- Effective date for revised FRS 102 is reporting periods beginning on or after 1 Jan 2025

2. Charities SORP (FRS 102) 2nd edition (Oct 2019)

- Being revised in line with the revised FRS 102 – timeline?

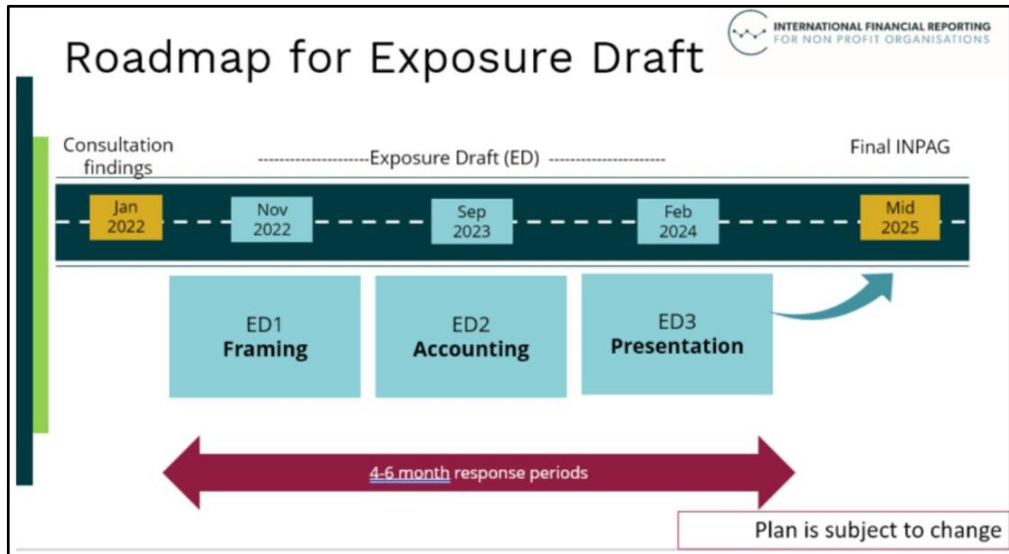


IFR4NPO initiative

(International Financial Reporting for Nonprofit organisations)

IFR4NPO is an initiative to develop the world's first Internationally applicable Financial Reporting guidance for non-profit organisations (NPOs). This will improve the clarity and consistency of NPO financial reports, resulting in greater credibility and trust in the not-for-profit sector globally.

www.ifr4npo.org



- Developing 'INPAG' - International Non-Profit Accounting Guidance
- INPAG will be based on IFRS for SMEs and will be stand-alone, so preparers and auditors can find what they need in one place
- Launch of final guidance in mid-2025
- What does this mean in practice?

Moore Kingston Smith

9 Appold Street

London

EC2A 2AP

t: +44 (0)20 4582 1000

f: +44 (0)20 4582 1010

www.mooreclear.com



Sally Knight

m: +44 (0) 7966 410874

sknight@mks.co.uk

Any assumptions, opinions and estimates expressed in the Information contained in this content constitute the judgment of Moore Kingston Smith LLP and/or its associated businesses as of the date thereof and are subject to change without notice. This Information does not constitute advice and professional advice should be taken before acting on any information herein. No liability for any direct, consequential, or other loss arising from reliance on the Information is accepted by Moore Kingston Smith LLP, or any of its associated businesses.

Moore Kingston Smith LLP is regulated by the Institute of Chartered Accountants in England & Wales. Certain activities of the LLP and/or its associated businesses are authorised and regulated by the Financial Conduct Authority or the Solicitors Regulation Authority. More details are available on our website at www.mooreks.co.uk © Moore Kingston Smith LLP.



MOORE Kingston Smith

who cares wins

moore
barlow
lawyers

Charities sector update 2023

Legal issues affecting charities

Paul Ridout, Legal Director, Moore Barlow

Outline

Charities Act 2022

- Where have we got to?
- What's still to come?

Two court cases

Two inquiry reports

Charities Act 2022

Phase 1: October 2022

- Paying trustees for goods
- Failed appeals
- Royal Charters etc

Charities Act 2022

Phase 2: June 2023

- Permanent endowment
- Land transactions
- Charity names

Charities Act 2022

Phase 3: end of 2023

Amending constitutions

- Charitable companies
- CIOs
- Unincorporated charities

Charity mergers

Ex gratia payments

Action in the courts

Butler-Sloss and others v Charity Commission

- where trustees consider that certain investments may conflict with their charity's purposes, they may, having balanced all relevant factors, exclude such investments from their portfolio
- the relevant factors include
 - the likelihood and seriousness of the potential conflict
 - the likelihood and seriousness of any potential financial effect from the exclusion of such investments.
- trustees may take into account the risk of losing support from donors and damage to the reputation of the charity generally and in particular among its beneficiaries.
- trustees need to be wary of making decisions on purely moral grounds, as there may be differing legitimate moral views among the charity's supporters and beneficiaries.

<https://www.bailii.org/ew/cases/EWHC/Ch/2022/974.pdf>

Action in the courts

Merton LBC v Nuffield Health

Rate relief

Public benefit assessed in the round, not on a site by site basis

“the rich are as much a part of the section of the public benefited by Nuffield Health’s charitable activities as are the poor, and it must be assumed from its registration as a charity ... that the poor are not excluded from benefit, on a view of Nuffield Health’s activities in the round, even if they are at the Merton Abbey gym”

<https://www.supremecourt.uk/cases/docs/uksc-2021-0138-judgment.pdf>

Care4Calais

- lax internal financial controls, governance failings, poor record keeping and complaints handling
- no misapplication or misappropriation of funds
- significant improvements to the charity's management, governance and operation
- JR of the Government's decision to deport asylum-seekers to Rwanda:
"acceptable political activity which was furthering the charity's charitable objects and was in line with the Commission's guidance CC9 - Campaigning and political activity guidance for charities"

<https://www.gov.uk/government/publications/charity-inquiry-care4calais>

Rhema Church London

- 2 whistleblowing reports
- inquiry and IM appointment
- disqualification
- “harassment, intimidation and threats”

<https://www.gov.uk/government/publications/charity-inquiry-rhema-church-london>

Contact: Paul Ridout
Telephone: 01483 417124
Email: paul.ridout@moorebarlow.com



Thank you

who cares wins

moore
barlow
lawyers

Private wealth | Family | Employment | Property | Corporate | Commercial | Schools | Charities | Disputes | Serious Injury

Moore Barlow and Moore Barlow lawyers are the trading names of Moore Barlow LLP, which is a limited liability partnership registered in England and Wales, registration number OC335180, authorised and regulated by the Solicitors Regulation Authority (authorisation number 487618). The registered office is Gateway House, Chandler's Ford, Eastleigh SO53 3TG. VAT registration number: 188 6831 09.

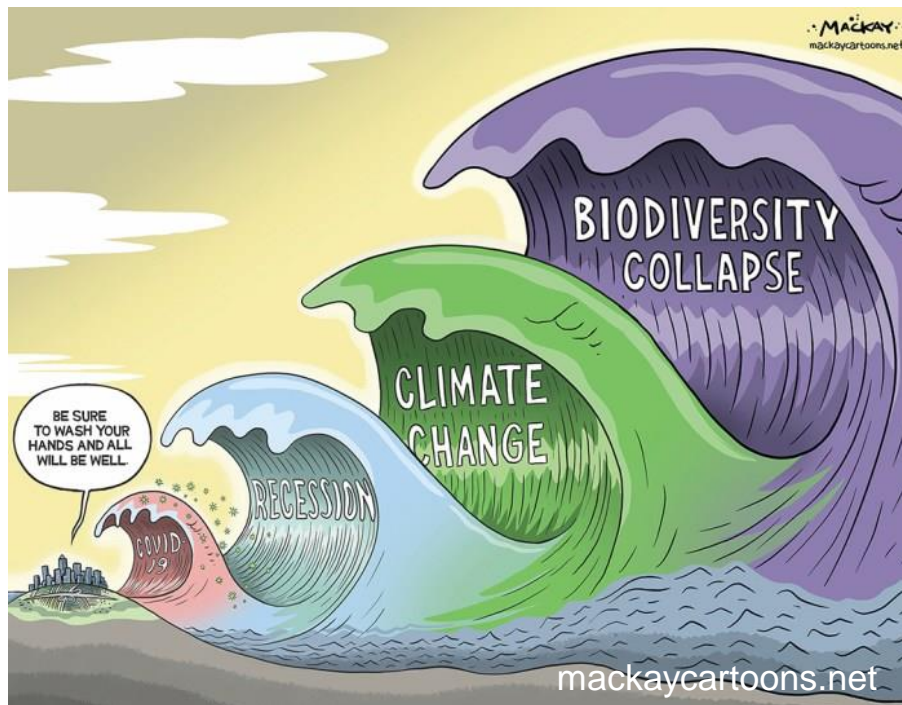


Fundraising and charity strategy trends

Dan Fletcher MCIOF(Dip), Director, Moore Kingston Smith Nonprofit Advisory



Navigating the new normal

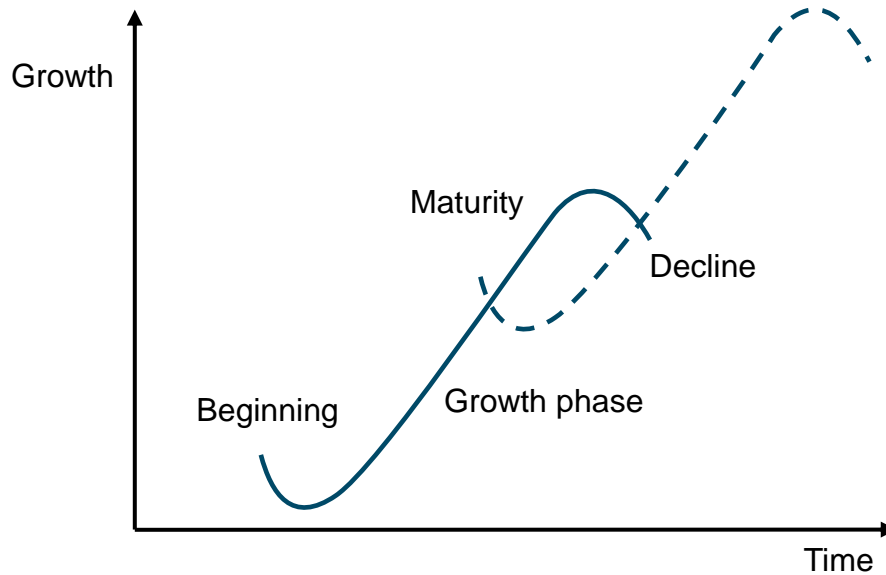


Seven significant trends and three observations

Thoughts from charity conversations

1. No nonprofit is affected in the same way – great diversity of issues
2. Covid enabled some organisations to stabilise and now grow
3. The Great Resignation is still having an impact on growth
4. Burnout and managing people is an on-going concern across the board
5. £420m for Ukraine, £150m for Türkiye-Syria, £48m for Pakistan
6. Importance of ESG among donor communities
7. 16:68:16 – where the impact of cost-of-living crisis is felt

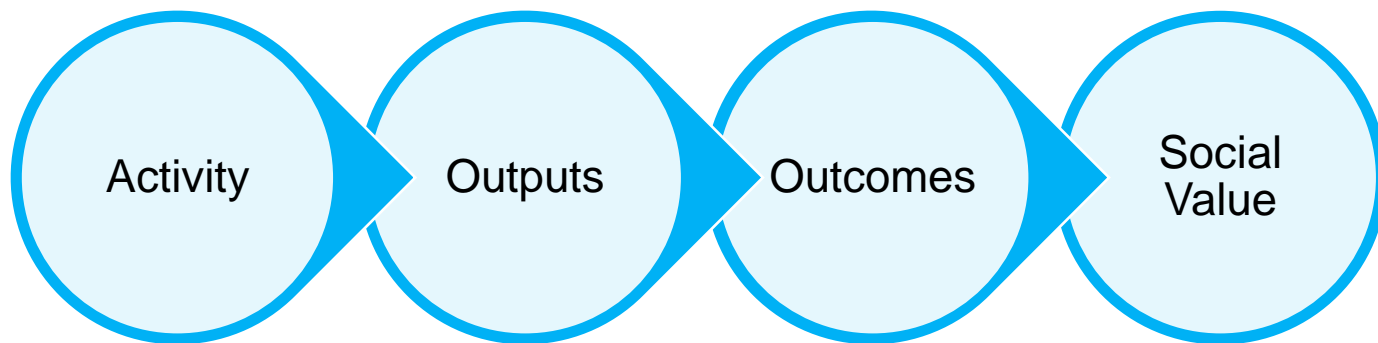
The Sigmoid Curve



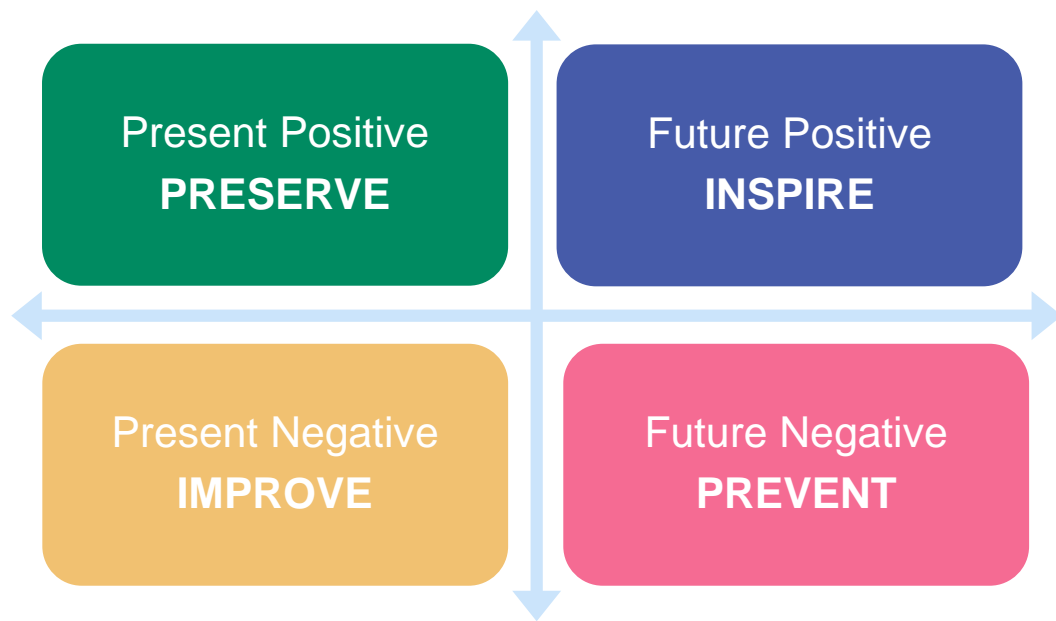
From Charles Handy, 1995

It's not what you do, it's the difference you make

The Social Value chain of change



Focus on the right type of Case for Support



Moore Kingston Smith

9 Appold Street

London

EC2A 2AP

t: +44 (0)20 4582 1000

f: +44 (0)20 4582 1010

www.mooreks.co.uk



Dan Fletcher

t: +44 (0)20 4582 1115

dfletcher@mks.co.uk

Any assumptions, opinions and estimates expressed in the Information contained in this content constitute the judgment of Moore Kingston Smith LLP and/or its associated businesses as of the date thereof and are subject to change without notice. This Information does not constitute advice and professional advice should be taken before acting on any information herein. No liability for any direct, consequential, or other loss arising from reliance on the Information is accepted by Moore Kingston Smith LLP, or any of its associated businesses.

Moore Kingston Smith LLP is regulated by the Institute of Chartered Accountants in England & Wales. Certain activities of the LLP and/or its associated businesses are authorised and regulated by the Financial Conduct Authority or the Solicitors Regulation Authority. More details are available on our website at www.mooreks.co.uk © Moore Kingston Smith LLP.



Tackling the charity cyber threat

Maritz Cloete, Director, Moore ClearComm



“IT TAKES 20 YEARS TO BUILD A REPUTATION AND
A FEW MINUTES OF CYBER-INCIDENT TO RUIN IT”

Stéphane Nappo

*Vice President of Group SEB, former Société Générale Global Chief
Information Security Officer and 2018 Global CISO of the year.*

THE CYBER THREAT

The cyber threat in 2023

- ✓ 69% of employees have bypassed their organization's cybersecurity guidance in the past 12 months
- ✓ 74% of employees said they would be willing to bypass cybersecurity guidance if it helped them or their team achieve a business objective
- ✓ 50% of IT leaders confirm that their cybersecurity budget fails to meet the minimum figure they need to remain on track with their security goals
- ✓ 70% of leaders believe ransomware poses their greatest cyber threat in 2023



The cyber threat in 2023 cont.

- ✓ Cyber attacks on UK organisations surged 77% in 2022
- ✓ UK education sector saw a 237% increase in attacks compared to 2021
- ✓ Education / research experienced a weekly average of 2,653 attacks
- ✓ UK organisations experienced an average of 788 weekly cyber attacks across 2022
- ✓ Escalation driven predominately by smaller, more agile threat actors and sophisticated ransomware gangs



Cybercrime: UK sectors most likely to be attacked



Government (National or Local)



Education



Healthcare



Charities/Third Sector



Finance and Accountancy

The threat to charities and the third sector

“All charities ultimately rely on public trust and continued public generosity.

So, the impact of any cyber attack on a charity can therefore be devastating, not just for the organisation and those who rely on its services, but also in undermining public confidence and support.

Taking steps to stay secure online is not an optional extra for trustees, but a core part of good governance.”

Helen Stephenson
(Chief Executive, Charity Commission for England and Wales)



Motives for attacking charities and the third sector

- England and Wales: 169,029 registered charities, combined annual income of £83.8 billion
- Scotland: 24,020 registered charities, combined annual income of £13.6 billion
- Northern Ireland: 6,691 registered charities, combined annual income of £2.3 billion
- UK = £99.7 billion industry
- Collect huge volumes of personal data from customers, donors or stakeholders
- Often share data with external organisations such as marketing companies.
- Cyber criminals and other groups may be able to gain access to charities' networks and/or information through these companies (supply chain risk is key in cyber security)

Motives for attacking charities and the third sector cont.

- Attractive targets for many hostile actors seeking financial gain, access to sensitive or valuable information, or to disrupt charities' activities
- May feel reluctant to spend resources, money, oversight and staff effort on enhancing cyber security rather than on front line charitable work
- High volume of staff who work part time, including volunteers, and so might have less capacity to absorb security procedures
- More likely to rely on staff using personal IT (Bring Your Own Device) which is less easy to secure and manage than centrally issued IT
- Impact of any cyber attack on a charity is particularly high. They often have limited funds, minimal insurance coverage and are a supplier of last resort, providing services where there is insufficient government or affordable private sector alternatives

Governance and Trustees

- The Board is responsible for making sure a charity is taking appropriate measures to protect itself from a cyber attack
- Not the IT department, or third-party providers
- Board members don't need to be technical experts
- You do need to know enough about the importance of cyber security, to enable educated discussions and collaboration with key staff
- Charities 6-7 years behind "Businesses"

NCSC Cyber Security Breaches Survey 2022:

% of organisations over time where cyber security is seen as a high priority for directors, trustees and other senior managers:



CASE STUDIES

Case study #1: Scottish Association of Mental Health (March 2022)

- “Devastating” and sophisticated cyber-attack at the Scottish Association of Mental Health
- Emails and phone lines were affected by the attack which left the organisation struggling to manage its vital support services across Scotland
- Cyber security researcher Sofiane Tahiri first revealed the attack after discovering 12GB of SAMH’s data on the dark web
- Cybercriminal gang RansomEXX claimed responsibility
- The data included sensitive personal information such as:
 - ✓ Names
 - ✓ Addresses
 - ✓ Email addresses
 - ✓ Passport information

Case study #2: IT Company cyber attack impact UK/NI charities (March 2023)

- Londonderry-based Evide manages data on behalf of 140 charities across UK and Northern Ireland
- Suffered a ransomware attack in March 2023
- Attack was detected when Evide detected unusual traffic on their network
- Ransom demanded by attackers but had not been paid
- Police Service of Northern Ireland contacted and investigated
- Four organisations that deal with victims and survivors of rape and sexual abuse had their data stolen
- Includes personal data, records of people's engagement with the organisations, letters, reports and other sensitive information

FIVE KEY STEPS

Key steps: Mitigate and manage your risk

Key steps to reduce your organisation's cyber security risk:

1. Education, training, awareness and employee diligence – strengthen the 'human firewall'
2. Obtain Cyber Essentials/Cyber Essentials Plus certification to make sure basic cyber hygiene is in place
3. Make sure your IT systems are "secure by design"
4. Get to know your suppliers and their cyber security posture
5. Plan for the worst - define and test your organisation's cyber incident response



Moore Kingston Smith

9 Appold Street

London

EC2A 2AP

t: +44 (0)20 4582 1000

f: +44 (0)20 4582 1010

www.mooreclear.com



Maritz Cloete

t: +44 (0) 204 582 2029

maritz.cloete@mooreclear.com

Any assumptions, opinions and estimates expressed in the Information contained in this content constitute the judgment of Moore Kingston Smith LLP and/or its associated businesses as of the date thereof and are subject to change without notice. This Information does not constitute advice and professional advice should be taken before acting on any information herein. No liability for any direct, consequential, or other loss arising from reliance on the Information is accepted by Moore Kingston Smith LLP, or any of its associated businesses.

Moore Kingston Smith LLP is regulated by the Institute of Chartered Accountants in England & Wales. Certain activities of the LLP and/or its associated businesses are authorised and regulated by the Financial Conduct Authority or the Solicitors Regulation Authority. More details are available on our website at www.mooreks.co.uk © Moore Kingston Smith LLP.



MOORE ClearComm