Charities InFocus

Issue 9 Winter 2021

Be More Future

CHARLES STANLEY

Welcome

Welcome to the latest edition of Charities InFocus. The Covid-19 crisis has created some serious challenges for the third sector, but more normal times may be approaching. Many changes brought about by the pandemic will remain, we will have to learn to live with them. There has been a digital revolution which looks set to continue to change the way charities operate – and long-term financial planning has been almost impossible. We examine both these issues within these pages.

We also look at a range of other issues impacting charities including the new Charities Bill and the lessons to be learned from the high-profile collapse of Kids Company.

We are always keen to hear what you think. If you have any thoughts on which aspects of the magazine you like and where you think we could do better, please email the editor at InFocus@charles-stanley.co.uk with your comments and questions.

Charles Stanley's team of commentators also provide a weekly email providing timely market updates from the team. We are also publishing commentary on our website and you can sign up for our weekly email at the bottom of the opinion page (www.charles-stanley.co.uk/news-opinion) which will keep you updated on our experts' views on market moves and the global investing outlook as we move through the current crisis and to the recovery phase.

We hope you enjoy this issue.

Glenn Baker, Charles Stanley

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A personal view from our Chief Executive

Over the summer, members of the Charity Commission Board held a series of meetings with small and medium-sized charities to hear how the pandemic has impacted these organisations. Clearly, the Covid-19 crisis has accelerated a digital transformation across the sector. However, it is larger organisations that have been well placed to take advantage of technology.

According to the Charity Commission, 38% of charities said they had moved services online. This was as high as 63% for charities with income in excess of £500,000, whereas for charities with income under £10,000, it was only 24%. It also found that around half of charities with income over £500,000 used furlough or emergency government support, but smaller charities were much less likely to have done so. Indeed, smaller charities were more likely to have stopped services – 25% of charities with income of less than £10,000 stopped all services, compared to just 3% of charities with income over £500,000.

The pandemic has forced trustees into taking different approaches to fundraising, developing new business and revenue models. Trustee boards now need to work in new ways to respond to financial and governance challenges. How is the Commission planning to help charities recover from this disruptive event so they continue to "deliver impact" with the services they provide?

Where charities have had to change their objectives during the pandemic the Commission has prioritised registration applications from organisations responding to the health crisis, and temporarily permitted some charities to postpone their annual reporting deadline.

The Commission has also been recruiting additional expertise in key areas such as intelligence, policy, communications and investigations, in order to proactively assess risks facing the sector and target interventions with maximum impact.

It will be many more months – or even years – before the full impact of the pandemic on the shape and size of the charity sector becomes clear, with many smaller charities experiencing a funding crisis during the pandemic. In this issue, we look at how to assess long-term objectives and funding needs as well as how technology can be used to improve a charity's operations – and allow them to employ skilled individuals based in locations that they were unable to before.

The pandemic has also highlighted the importance of having robust cash reserves to weather financial crises and keep charities going as they rebuild and rethink their operating models in response to the crisis.

As we look forward to the return of a more normal environment in 2022, we are hopeful that some of the pressures and funding shortfalls can be addressed to help The Third Sector continue with its necessary work.

Paul Abberley,
Chief Executive,
Charles Stanley

Technology and the future of trustee meetings

By Garry White
Chief Investment Commentator, Charles Stanley

Facebook (Meta) chief executive Mark Zuckerberg wants to upgrade the internet to a "metaverse", a virtual reality space where people based anywhere in the world can meet in the same virtual space. But can technology ever adequately replace face-to-face meetings between Trustees, donors and beneficiaries?

The Covid-19 pandemic has accelerated the digital revolution. The rise of online shopping, remote working and the widespread use of video-conferencing and online seminars means digital tools are now in everyday use by most people – either in the workplace or at home.

Technology has upended many industries significantly over the last decade, ranging from taxis and Uber to hotels and Airbnb. It's not that long ago that people wanting to buy equities had to call a broker in contact with someone literally standing on a trading floor shouting out buy and sell orders. Now trades can be executed by logging into a smartphone app.

Facebook now wants to bring virtual-reality headsets into the workplace, allowing workers and volunteers to inhabit cyberspace in ways that were never possible before. Silicon Valley tells us that the metaverse offers untold ways to enhance communication for all – but it could potentially complicate the relationship between individuals if they are only together in a virtual space rather than a real, physical room.

As hybrid and home working becomes the norm, the social-media giant wants to leverage its own virtual-reality (VR) Oculus headset as a tool for professional workspaces in the metaverse. This evolution of the internet will allow people all over the world to enter virtual meetings and workspaces via their headset wherever they are located, the technophiles say.

The metaverse is a more all-encompassing version of the internet. The term refers to digital spaces rendered more lifelike by the use of VR or augmented reality (AR) technology so they become "fully immersive". People can interact with one another and digital objects while operating virtual representations – or avatars – of themselves.

Meet you in the metaverse?

Following the Covid-19 pandemic, hybrid working is almost certainly here to stay. With some time spent in the office and other days working from home, colleagues will obviously spend less time together in person than may have been the case in a pre-pandemic five-day working week. Proponents of the metaverse claim that its ability to connect disparate employees means the technology has a place in the future workplace. Or, as the excessively slick public-relations team for Facebook's Reality Labs put it in the sales pitch for Horizon Workrooms, its new VR meeting space concept: "Sometimes you have to get into the same room, even when you're miles apart."

When running any organisation, face-to-face interactions will always be the gold standard. So, is Mr Zuckerberg's metaverse idea a Silicon Valley gimmick – or could it become an invaluable tool for charities?

Clearly, this is a difficult question to answer. However, the way the board of directors of Britain's major listed companies have behaved since the onset of the Covid-19 pandemic may offer us a clue or two.

The right format for the right meeting

Zoom's video-conferencing platform became synonymous with pandemic lockdowns – with the system – or similar – used ubiquitously. This meant that the boards of Britain's FTSE 100 giants were running their businesses by holding almost all meetings virtually.

Consultancy group Board Intelligence, which aims to help and improve practices in Britain's boardrooms, carried out a straw poll in April that suggested about two-thirds of UK boardrooms will continue to meet online for more than half the time. However, some meetings are too important for participants to risk missing the nuances of non-verbal communication in a room of people.

The metaverse is a more all-encompassing version of the internet. The term refers to digital spaces rendered more lifelike by the use of VR or augmented-reality (AR) technology so they become "fully immersive".

Board Intelligence's co-chief executive Jennifer Sundberg believes a "best-of-both" solution is the way forward. She expects that a hybrid calendar of meetings will emerge instead of "hybrid meetings" with some participants on a video-conferencing platform and a proportion in a head office meeting room. In reality, this means that directors are likely to carry out their supervisory duties (such as monitoring targets) via meeting in the cloud, with more important steering meetings about strategy or culture taking place in person to ensure there are no barriers to proper communication.

Trustees are already likely to know which meetings they believe need to take place in-person. However, technology can offer ways to keep information flowing efficiently – and could even provide a platform to reach potential new donors that were not being reached before.

Technology has already engaged a new generation of investors in equity markets, who can now buy and sell fractional shares on their smartphones. Young investors can gain access to information via the internet that wasn't available to their parents' generation and process the reams of information through apps or websites.

Charities cannot afford to ignore the rise of the metaverse because the new technology offers the chance to reach individuals and organisations in these new digital spaces that possibly were not available before. Impressive new technology using platforms such as the metaverse (whatever its final form turns out to be) needs to be deployed wisely to ensure it is helping rather than harming a charity's interests by increasing complexity or impairing efficient communication.

However, it will clearly bring opportunities to increase a charity's reach, make communication more time efficient and facilitate a connection to people with which it was not possible before. The ongoing digital revolution needs to be monitored very closely indeed.

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Inside the mind of an investment manager

By Rebecca Stein
Investment Manager, Charles Stanley, Oxford

An investment strategy plays a critical role in managing market risk.

We recognise that each charity has unique priorities, challenges and ways of working. As a result, every charity has a unique desired outcome from their investment portfolio.

It is important that your investment manager has a deep understanding of the individual investment needs and aspirations of the charity. Risk comes in many forms and it is key that we understand how much risk the trustees can take so that we can create an investment solution which produces the appropriate risk-adjusted returns.

Risk can be stock specific and can take the form of capital and income volatility. When investing, our aim is to provide capital growth so that the portfolio can provide an above-inflation return. This coincides with the need for investments which provide a natural income, such as high-yielding equities, fixed-income bonds and infrastructure investments.

When investing for an income, one of the key risks is that the investment portfolio performs poorly in the early years while income is being withdrawn, making it difficult for the portfolio to recover. This can be even more challenging when the income requirements are inflexible. When markets are falling, and income is withdrawn, capital erosion makes it difficult to maintain or grow the original capital value year-on-year.

The good news is that this risk can be managed. The investment strategy plays a critical role, as does the ongoing communication with your investment manager to ensure income needs can be met in plenty of time without last-minute withdrawals when the market environment is unfavourable.

We work to understand the hypothetical worst-case scenario and the effect that this could have on income. By selecting investments which are in line with your risk appetite to create a well-diversified portfolio, we can ensure that the impact is much less severe when withdrawing an income.

> **When markets are falling it is important to have a good mix of asset classes which are uncorrelated to each other – this helps to mitigate risk.**

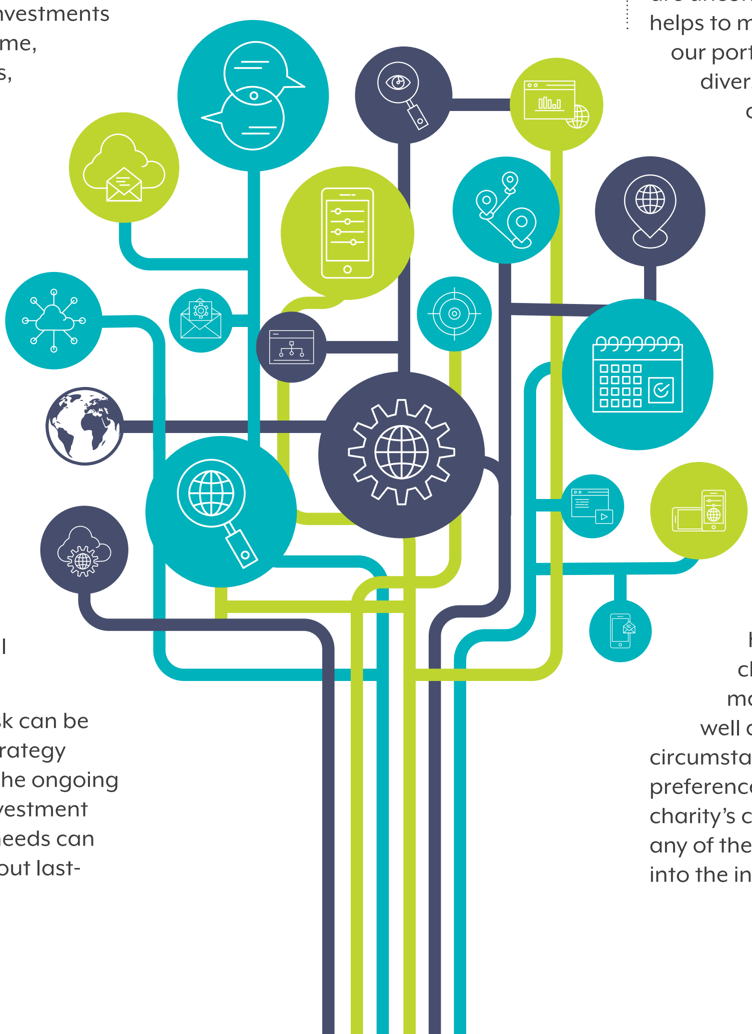
If a portfolio experiences dramatic highs and lows, and funds are withdrawn at a low point, the portfolio can be quickly diminished by the compounding effect of the income being withdrawn combined with the capital losses on the portfolio.

Diversification is key

The father of Modern Portfolio Theory, Harry Markowitz, famously called diversification ‘the only free lunch in finance’. The concept behind the ‘free lunch’ is correlation – or lack of it.

When markets are falling it is important to have a good mix of asset classes which are uncorrelated to each other – this helps to mitigate risk. We also try to build our portfolios to be internationally diversified across a number of countries. For example, during the initial Covid-19-pandemic-related market drop, global markets fell by more than 35%.

The main US indices, which have a high weighting in technology stocks, quickly recovered to new all-time highs. The more cyclical UK indices, on the other hand, have struggled to reach pre-pandemic levels. This shows how important it is not to be too overly exposed to one region.



Risk assessments are highly subjective and will change over time because of market or economic events, as well as changes in the charity’s circumstances, objectives and preferences. We regularly review the charity’s circumstances to ensure that any of these changes are incorporated into the investment strategy.

COLLECTIVES

The future of food

The majority of us are starting to understand the impact fossil fuels has on our environment. But is the same true with our food – one of the big contributors to climate emissions?

By Lynn Hutchinson
Senior Analyst, Passives,
Charles Stanley

> **The value of the plant-based meat market is now on track to rise from $10.1bn in 2018 to $30.92bn in 2026.**

Our consumption of food plays an important role in the economy and is obviously essential for life. However, what many of us are unaware of is the impact that different types of foods have on the environment.

Food accounts for approximately 26% of global greenhouse gas emissions. This is a result of: deforestation; emissions from fertilisers and manure; methane from cattle; methane from rice production; energy use on the farm; supply-chain emissions from food processing, refrigeration and transport.

Even if we stopped emissions from fossil fuels right now, emissions from food production alone would take us well beyond the "carbon budget" for 1.5°C and leave little room to reach our 2°C target agreed globally.

As the human population has grown, demand for meat has risen. Cattle and soy production are now the leading cause of deforestation in the Amazon rainforest. Nearly 80% of all soy produced is used to feed livestock, including cattle. Deforestation not only leads to emissions of huge quantities of carbon through forest biomass combustion and decomposition, but it also alters soil carbon content.

A recent study in the UK reported that meat consumption within the UK has fallen by 17% over the last decade – but scientists warn that this is not happening quickly enough to help reduce the environmental impact of our diets. The National Food Strategy recommends meat consumption in the UK needs to fall by 30% over the next 10 years. Another report in the US showed that Americans are cutting back (although not enough) on meat consumption for reasons of health, environment, food safety and animal welfare.

It isn't just meat that is adding to the problem, as food packaging also contributes negatively to the environment. As awareness grows, 69 countries in the world have passed some sort of full or partial ban and/or tax on usage of new plastic bags.

There is also a change to the labelling of food arising in the UK where the UK's biggest supermarkets and food brands are uniting to show a front-of-pack environment score on our food products with a colour coded traffic-light style system similar to the one used for nutritional content to be applied to all food products across Europe. This should enable customers to make more sustainable buying choices – expected to be in place in 2022.

The ultimate aim is 'to save the planet'. The hope is that consumers, armed with credible, independent information, will swing their purchases towards more sustainable products. In turn, food producers will be motivated – or shamed – into improving processes, sourcing and emissions to secure a better score, according to Foundation Earth's executive director.

In 2019, the global market value of green packaging amounted to some $178.6bn and is forecast to reach $246.3bn by 2025.

Consumers around the world are becoming more aware and the growing environmental movement and increasing health awareness has the potential to be the single biggest thing we can do as consumers to reduce deforestation in places such as the Amazon (largely attributable to beef production) and Borneo (largely attributable to palm oil production).

The value of the plant-based meat market is now on track to rise from $10.1bn in 2018 to $30.92bn in 2026.

In Europe, interest in the future of food has led to the launch of some investment products including an exchange-traded fund (ETF) that aims to capture consumer food buying changes. In 2020, Rize ETF providers launched a fund that includes companies involved in the sustainable food industry and which potentially stand to benefit from the accelerating transition to more sustainable food production systems and consumption patterns. Inclusion into the fund is to capture companies that are predominately plant based, including companies producing reusable, recycling and compostable packaging. The ETF has an aptly named identified ticker of FOOD.

There are a number of exclusions – companies involved in GMO seeds and products (companies involved in gene editing are included), land-reared meat (including beef, lamb, pork, poultry and fish), eggs and dairy. Companies also need to demonstrate sustainable procurement of major forest risk commodities within their supply chains – palm oil, soybean, cattle and timber through the CDP Worldwide Group. Finally, there are a number of ESG exclusions like tobacco and weapons companies.

This is early days for this investment sector and the theme is likely to take many years to play out, but sustainability of our food supply is an issue that will not go away.

The future and the new model charity

By John Redwood
Chief Global Economist,
Charles Stanley

Trustee time horizons usually look well beyond their lifetimes with the vision that the charity will live on. This requires in-built flexibility and the careful consideration of future resources into their plans.

Charities took quite a battering during the pandemic lockdowns. Traditional events and in-person fundraising were cancelled, as trustees and managers adjusted to the online world and the digital appeal. As things return to something a bit more normal, charities need to adapt to the hybrid world that is emerging. Success will come to those that can combine the best of the digital with the best of the traditional.

Charity trustees need to be flexible and to think about how their charity can adapt and develop as time alters its needs and methods. Charities can benefit from building an endowment fund by asking for some donors to provide long-term funds that can support the organisation through good times and bad. Some charities that depended only on funds collected year-by-year were forced into abrupt reductions in spending, as the closure of the economy dried up some of the donations. The charity that had a long-term endowment fund could decide to draw down a bit more from the endowment in a year of need, where it had sufficient for future purposes.

Charities with larger evergreen endowments often decide they can afford to spend a bit of the capital gain each year as well as the income. At a time of very low interest rates for cash and bonds, and quite low dividend yields on many successful company shares, it may be possible to draw a little on the gains that have accumulated on the riskier equity-based investments. Such charities often have a concept of sustainable income or return, spending an amount which still leave the endowment growing in real terms and capable of absorbing the pressures of inflation. Trustees take advice on what is prudent and what is compatible with their long-term aims.

Looking after the future

Judging the balance between current needs and future requirements is not easy. Over recent years, when returns on endowment investments have been good, the charity that has foregone some of the immediate spending in order to look after the future has often found they can do both well thanks to the investment growth of their money. Having an investment fund that is growing more than price and wage rises over the longer term is like having a regular generous donor that keeps on giving.

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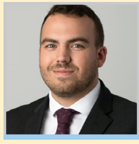
No-one expects trustees to be Mystic Meg, capable of predicting the future with great accuracy. Good trustees do, however, respect the future, and build flexibility and future resources into their plans. They leave the charity financially stronger than when they joined it. They are content in the knowledge that it is never wrong to leave endowment money to their successors, to spend on the challenges they will face.

The important thing for the trustees to do is to define the longer-term aims of the charity and to think about how they best use the money they are given to increase the scale of their activities in an affordable way – and reduce their vulnerability to sudden swings in the national economy and donor willingness to help.

The pace of technical change is rapid and has just been accelerated by the forced changes from lockdown. It will in future be a more digital world, with donors and recipients of help used to living more of their lives on smartphones and computer pads. Unfortunately, however digital we go, there will still be plenty of issues and human needs to which worthy charities will respond. Having more money to do so will remain a timeless way to prepare for an unknown future.

CHARITY ASSET INSURANCE

Three key tips for trustees responsible for insuring physical assets



By Tom Montague
Commercial Division,
Aston Lark Limited

1. Make a fair presentation to your insurer

In an effort to readdress an imbalance in power that sometimes overly favoured insurers, the UK Government updated legislation applying to UK insurance policies. The new Act (effective from 2016) states, 'Before a contract of insurance is entered into, the insured must make to the insurer a fair presentation of the risk'.

The alteration only requires you to make small changes to your insurance-buying process. However, it does place more responsibility on your shoulders as the customer. In return, the Act gives protection by ensuring cover is as effective as possible, removing the possibility of breaching cover terms for minor indiscretions. The Act can be easily complied with, provided you take certain measures, such as:

- Investigate whether there's anything special or unique about the risk your business faces that should be declared.
- Establish a process for documenting that you undertook a reasonable search for information.
- Determine whom in your business needs to be consulted as part of a reasonable search for information related to the insurance you purchase.
- Ensure that you consult with any third parties or individuals that may have material information which may need to be shared with insurers (claims/incidents, buildings work and unoccupancy periods are key examples).
- Leave more time for renewing your insurance, especially for gathering the necessary data for insurers, as now you will likely need more data, presented in a clear and accessible manner.

2. Ensure the sums insured are adequate

A common pitfall across many insurance purchases is the failure to maintain appropriate sums insured. It's likely your policy will be subject to an 'Average' clause which means that, if your sums insured are inadequate, you will receive a proportionate settlement based on the underinsured sum. For example, if you are 50% underinsured, you will only receive 50% of your claim – regardless of the amount claimed.

If you don't know how the sums insured are calculated, we recommend appointing a surveyor to value the property. Contents checklists will also help you to maintain a record of what property should be included within the calculation.

If a trustee fails in their duties to appropriately arrange insurance, they may be held personally responsible for any liabilities the charity incurs as a result.

3. Protect your Personal Liability

If a trustee fails in their duties to appropriately arrange insurance, they may be held personally responsible for any liabilities the charity incurs as a result. Because trustees act collectively, they could be collectively responsible for meeting this liability. Trustee Indemnity Insurance (TII) covers trustees from having to personally pay legal claims made against them, either by the charity or a third party, for negligence or for a breach of trust or duty. TII can be purchased by the charity as a benefit for the trustees so they have peace of mind when making these decisions. We would certainly recommend this is included as part of any insurance purchasing decision.

If you would like to find out more and have support from an expert, get in touch with the insurance brokers, Aston Lark.

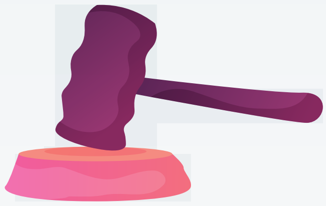
To discuss any of the themes in this article, please contact Tom at **tom.montague@astonlark.com.**

ASTONLARK

Kids Company: Lessons for current and future charity trustees

By Jennifer Emms and Jerry Jamieson
Maurice Turnor Gardner

Kids Company was a household charity name. It had a 'very significant and in many ways highly regarded operation' (as per the judge in the recent court case). The case did not involve any allegations whatsoever of dishonesty or bad faith. Moreover, there was no challenge made to any particular spending on any beneficiary. Here we explain the reasons for the charity's demise, what the case was really about, and its repercussions for the charity sector.



We were the lawyers acting for one of the individuals exonerated at the end of a lengthy, ten-week high court hearing in 2020, with judgment handed down in early 2021 (more than five years after the charity's closure). We consider this to be a seminal case for all those who are, or are thinking of becoming, a charity trustee.

By way of background, Kids Company was founded in 1996, registered as a charity in 1998 and operated to help vulnerable young people at several centres across London (and later in Bristol and Liverpool) as well as in schools, until it went into insolvent liquidation in 2015.

The charity has been the subject of intense press attention. Unsuccessful legal proceedings were brought in 2017.

Overview of the proceedings

The proceedings were brought by the Official Receiver (who collects in assets, pays creditors and investigates the reasons for insolvency). The proceedings were brought against the charity's trustees who, consistent with this role, acted on an unpaid and voluntary basis, and against the charity's CEO. The Official Receiver sought to disqualify these individuals from acting as directors for a number of years. This would affect not only their ability to take on other charity roles but also their livelihoods and commercial careers.

In basic terms, the sole allegation was that the charity's business model was unsustainable. The features of Kids Company which the Official Receiver alleged amounted to an 'unsustainable business model' are likely to be familiar to many current charity trustees. As such it will be a huge relief to many charity boards that the judge declined to disqualify Kids Company's trustees, stating 'I am wholly satisfied that a disqualification order is not warranted against any of the Trustees... On the contrary, I have a great deal of respect for the care and commitment they showed in highly challenging circumstances.'

The alleged features of an 'unsustainable business model' – do they ring any bells?

These features were criticised by the Official Receiver as forming part of Kids Company's business model:

- **Kids Company had a demand-led model, whereby beneficiaries self-referred to the charity.**

  The judge recognised that Kids Company was not alone in this respect: charities devoted to relief of those in need are often led by demand, but this does not mean the support

In basic terms, the sole allegation was that the charity's business model was unsustainable.

  was open-ended. Charities such as Childline and Citizens Advice also have beneficiaries that come forward to them.

- **Kids Company fundraised to meet charitable need.**

  The judge found that this in and of itself was not problematic. The Kids Company trustees were aware of the risk, there was a past history of successful fundraising and the trustees were (acting reasonably) reassured about upcoming income prospects.

- **Kids Company had insufficient liquid reserves.**

  Whilst building up liquid reserves is obviously desirable, the wider circumstances need to be considered. The judge recognised it can be difficult to attract donations/grants to build up reserves and it was not a legal requirement. In Kids Company's case, it would have diverted resources from the pressing needs of beneficiaries.

- **Whilst they considered restructuring the charity, Kids Company's trustees should have cut costs earlier.**

  The Kids Company trustees were found to have exercised regular scrutiny over costs spent on the children that the charity supported.

Kids Company grew substantially between 2012 and 2014 in response to increasing need. The charity also experienced cash flow difficulties by virtue of its seasonal income (weighted to the end of the year).

The charity trustees recognised that the funding model needed to change. The judge found that it was legitimate for Kids Company's trustees not to make material, radical cuts and close operations, which would have been detrimental to beneficiaries, whilst they genuinely believed in the prospect of further statutory funding and in strong support from philanthropists (and when the level of support ultimately offered would affect the extent of the cuts required).

A restructuring plan had been agreed but the charity's restructuring funding was undermined and it was forced to close following sexual assault allegations which, after a detailed investigation, the police determined to be unfounded. The judge concluded that, absent the unfounded allegations, it is more likely than not that the restructuring would have succeeded and the charity would have survived.

Lessons for current charitable trustees:

The court's findings on the aforementioned common features of charities will reassure many current trustees.

Importantly, the Kids Company case has reaffirmed the traditional structure of large charities: that trustees set strategy and carry out a supervisory role and are able to rely on staff members (like the CEO) for the day-to-day running of the charity and on third party professionals, such as accountants and auditors.

Kids Company had multiple trustee committees, as well as a board that met frequently. The function and regularity of these committees was a significant factor in the trustees' oversight of the charity: all current charitable trustees should check their processes and keep them under constant review. This includes good governance (are decisions made in the right place, what are the reporting lines?), record-keeping (if it isn't written down, it didn't happen!) and fully appreciating the risks to the organisation, such as safeguarding and reputational risks and the appropriate level of reserves and its achievability.

Lessons for charitable trustees:

The case was a very gruelling experience for the trustees, involving a long and public process. It serves as a reminder for trustees, both new and experienced, that a charity trusteeship is not simply an honorific role but one that comes with significant responsibilities.

Charitable trustees are subject to numerous legal and fiduciary duties and trusteeships can be incredibly time-consuming, particularly if the charity gets into difficulty.

Charitable trustees are subject to numerous legal and fiduciary duties and trusteeships can be incredibly time-consuming, particularly if the charity gets into difficulty. For this reason, it is advisable for those contemplating joining a charity board to pick an inspiring cause that they feel passionate about. Upfront due diligence about the charity is also vital and should cover at least the following:

- Looking at the governing documents to understand the charity's objects (as the charity's resources must only be used for those purposes), the governance structure, and how trustees and members should make decisions (e.g. notice and quorum, regularity of meetings etc).
- Looking at the charity's accounts. It is critical to understand the financial position e.g. its income sources and level of reserves.
- Assessing the charity's personnel. If it is a large organisation it will ordinarily have staff and delegation and reporting lines should be considered. For the trustee board, having a chairman with a good relationship with the CEO is advisable. Speaking to those already involved in the charity is a good way to ascertain this.
- The identification of key risks to the charity at the outset. This will help you to monitor and address them going forward as a trustee. Operating (rather than grant-making) and unincorporated (as opposed to incorporated) charities will generally carry more risk.
- Reading the Charity Commission guidance on being a trustee, in order to understand your duties.

Ultimately, charity trusteeships can be challenging and a significant commitment but they can also be incredibly rewarding and are critical to the third sector.

Jennifer Emms is a Partner and Jerry Jamieson an Associate, at law firm Maurice Turnor Gardner LLP.

‘Barnacle’ Bill

By Jayne Adams
McCarthy Denning

Barnacles. Your experience of the law and lawyers may make you think the law is riddled with those. Lord Hodgson, who reviewed the Charities Act 2006, concluded that charity law placed “unnecessary burdens on trustees [which] act like barnacles on a boat, causing a drag when all should be plain sailing”.

The Charities Bill currently making its way through Parliament attempts to chip away at the barnacles, or as more prosaically described in the Queen’s Speech of 11 May 2021: “to support the voluntary sector by reducing unnecessary bureaucracy”. The Bill is not a significant overhaul of charity law and does not attempt to quell political storms such as public benefit. If made law, it will reduce the drag and charities should be alive to the prospect of some calmer seas and fairer winds. The Bill’s provisions are largely technical, which is thrilling for lawyers, but perhaps less so for others. What follows, therefore, is a brief overview of some of the Bill’s highlights of likely relevance to many charities.

Ebb and flow

Changing factors, whether external such as social and economic circumstances, or internal such as governance and personnel circumstances, can lead charities to seek amendments to their governing documents. The correct process, by which valid amendments are made, can be complex: it involves consideration of the provisions of the charity’s governing document, law and procedure pertaining to the charity’s legal structure, charity law and procedure and relevant Charity Commission guidance. Amendments may require third party consent and/or prior Commission authority. The Bill facilitates the amendment process by, for example:

The Bill relaxes some of the current rules and also empowers trustees to resolve that proceeds from a failed funding appeal are applicable to different charitable purposes.

- awarding trustees of unincorporated charities - a wide statutory power to amend governing documents by resolution where they are satisfied that the amendment is expedient in the interests of the charity (provided that the amendment would not result in the charity ceasing to be a charity). Note that the Commission’s prior written consent remains a prerequisite for certain amendments (such as altering a charity’s purposes or authorising a benefit for charity trustees);
- removing the requirement for the Commission’s prior approval to the alteration of a charitable company’s purposes where such alteration does not affect the substance of those purposes; and
- tidying up and aligning elements of the Commission’s (and other relevant) procedures as applicable to different types of charities.

Pieces of eight

A happy problem for a charity is to raise more funds than needed for a particular appeal and a less happy one is when not enough is raised. Both scenarios may present problems, however, in dealing correctly with the excess or inadequate funds. Ideally, the funds will be applied for purposes as close as possible to the original appeal purpose (rather than, for example, having to be returned to donors). At present, this may be achievable, but will likely involve a cumbersome and time-consuming process with the Commission. The Bill relaxes some of the current rules and also empowers trustees to resolve that proceeds from a failed funding appeal are applicable to different charitable purposes. Particular considerations apply and, where the proceeds of the appeal exceed £1,000, the trustees’ resolution is ineffective without the Commission’s written consent.

Purser’s command

Ex gratia payments (payments which trustees feel morally obliged to make out of charity funds, but which they have no legal obligation to make) currently require the prior authority of the Commission, the Court or the Attorney General. The Bill introduces a new power for trustees to make small ex gratia payments without prior Commission authority. The size of payments permitted (£1,000 - £20,000) is determined by the gross income of the charity, i.e. with larger charities allowed to make larger ex gratia payments. Trustees are also able to delegate decision-making about such payments, albeit they retain ultimate responsibility.

Landlubbers

Charities engaged in land deals will have weary familiarity with the barnacles impeding the smooth passage of the transactional ship. A restrictive regime applies to disposals and mortgaging of charity land, but the Bill aims to clarify, simplify and facilitate matters. Particularly welcome is the expansion of who may advise charities on disposals, to include, in addition to qualified surveyors, fellows of The National Association of Estate Agents and The Central Association of Agricultural Valuers. Suitably qualified charity trustees, officers and employees will also be able to provide certain reports or advice (including in respect of mortgages) to their own charities. The Bill also removes the requirement for trustees to advertise a proposed disposition of land in the manner advised in the surveyor's report.

Tie at anchor

Identifying and dealing with permanent endowment property (broadly, property the expenditure of which is restricted to income and not capital) can cause headaches. The Bill clarifies and simplifies the rules, to some extent (making it easier to release restrictions on spending capital), and there are new statutory powers relating to:

- the use of permanent endowment funds to make social investments (in limited circumstances); and
- trustees borrowing up to 25% of the value of the permanent endowment, subject to recoupment within 20 years, without having to obtain a Commission Order.

Boaty McBoatface

Charities may know that the Commission currently has power to direct a charity to change its name. The Bill expands this power, including empowering the Commission to direct a charity (including unregistered charities) to cease use of its working name, or change its formal or working name if it is the same as, or too similar to, the formal or working name of another charity. Under the Bill, exempt charities can also be required to change their names. It is always advisable anyway to check existing names in use prior to making any name change or forming a new charity, and will become even more so.

In the wardroom

Trustees themselves are not ignored by the Bill. The Commission is empowered to confirm a trustee's appointment (with that person's consent) where there is doubt about or a defect in their appointment.

Remuneration of trustees for the provision of goods to their charity (or, including as well as, services) will also be permitted and the Commission will have power (subject to the consideration of various factors) to authorise payment of a trustee (or the retention of another benefit) for work undertaken for the charity where it would be inequitable not to do so. Under the Bill, charitable corporate bodies which are sole trustees of charitable trusts will automatically have trust corporation status conferred on them: this facilitates, for example, the sale of charitable trust property and properly discharges retiring trustees from their responsibilities.

On the horizon

Inevitably, the detail of the above – and other – provisions in the Bill requires careful scrutiny and appropriate advice, prior to charities declaring full steam ahead. The Bill also has to be made law first. This is reasonably expected in 2022, although implementation may take some time. Bear in mind, though, hopefully forthcoming favourable winds and tides - and be ready to set the mainsail.

Jayne Adams is a partner in the Charity & Not for Profit team at McCarthy Denning. An experienced charity trustee herself, she is currently Chairman of Walthamstow Hall.

An update on our awards and special events…

MCC Cricket Final

On 21 September 2021, the Marylebone Cricket Club Foundation (MCCF) hosted the grand final of its inaugural National Hub competition at Lord's Cricket Ground. The event marked the conclusion of the 20-week long competition for boys and girls aged 15 and under from across the UK.

Charles Stanley is long-standing supporters of the MCCF and CEO Paul Abberley was delighted to present trophies to the talented young cricketers. The MCCF's aim is to make the sport more accessible, and ensure every young cricketer is empowered to reach their full potential. The opportunity to play in the final at Lord's, cricket's greatest stage, was a fitting ending to the competition and the incredible skill and passion shown by the young cricketers.

City of London Thames Fishery Experiment

On 18 September 2021, the Charles Stanley team won first prize at the City of London Thames Fishery Research experiment. The objective of the event is to establish the environmental condition of the Thames by assessing the number and size of fish species caught.

This year there were 11 teams in total, and points are awarded based on how many fish the team catches, how unusual they are and their size. Charles Stanley has been participating in the annual event since its inception 49 years ago, but the City of London Corporation's association with the river dates back much further – having been responsible for monitoring health on and in the river since the Middle Ages.

The event included with an awards ceremony and lunch, attended by the local mayor, fishing inspectors and environmental inspectors in addition to the anglers and representatives from the City of London Corporation.

Awards Corner

Professional Adviser RP
WOMEN IN FINANCIAL ADVICE AWARDS 2021

Women in Financial Advice Awards

An incredible seven women from Charles Stanley secured nine finalist spots across five categories at this year's Women in Financial Advice awards. The awards, run by Professional Adviser & Retirement Planner, celebrate the achievements of women working within the financial advice community and also the financial services sectors that work to provide solutions for their clients. Congratulations to Shelby Bonham-Lloyd, Jane Bransgrove, Emma Foden-Pattinson, Charlotte Lambeth, Tsitsi Mutiti, Laura Slater and Rebecca Stein on this excellent achievement.

Charles Stanley's Autumn Trustee Training: Charities and the Importance of COP26

We were delighted to see so many trustees and their advisers attend our Autumn Trustee Training on 3rd November 2021. Within the session our CEO, Paul Abberley, and Martin Vander Weyer, Business Editor of The Spectator, reflected on the four goals of COP26 (below), how easily these can be achieved and the impact climate change and considerations of ESG have had on the investment world.

- Secure global net zero by mid-century
- Adapt to protect communities and natural habitats
- Mobilise finance
- Work together to deliver

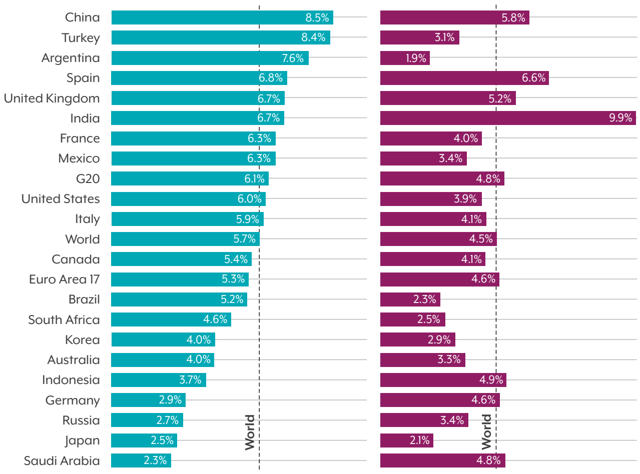
DATA FOCUS

Growth is recovering and IPOs soar – but unemployment remains problematic

UK growth in 2021 expected to be highest in G7

The UK economy will grow the fastest amongst the group of the world's richest countries, according to the Organisation for Economic Co-operation and Development (OECD). The OECD thinks the UK economy will expand by 6.7% in 2021, the highest rate of growth among the G7. The UK's leading growth rate has been driven by ultra-accommodative support from the Bank of England and the successful rollout of Covid-19 vaccines, the organisation said.

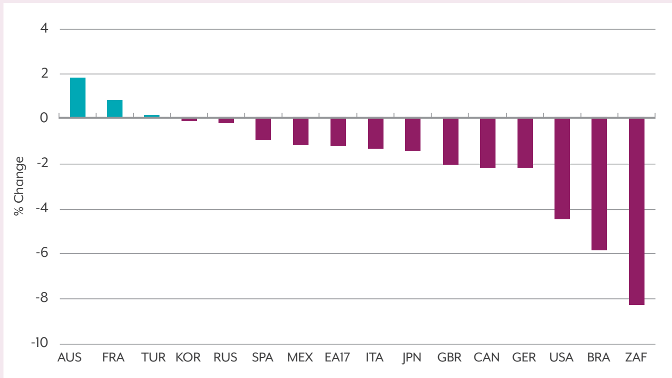
Below are the OECD's forecasts for major economies in 2021 and 2022 (%, year-on-year)



Source: OECD Economic Output Interim Report September 2021

Employment below pre-pandemic levels in most countries

Global GDP has now surpassed its pre-pandemic level, but output and employment gaps remain in many countries, particularly in emerging-market and developing economies where vaccination rates are low. As the chart shows below, unemployment remains a global issue.



Source: OECD Economic Output Interim Report September 2021

UK IPOs break records in the third quarter

Listing activity on the London markets has maintained the momentum witnessed during the first half of 2021 during the third quarter, with a record-breaking quarterly performance on both the main market and Alternative Investment Market (Aim), according to EY's, IPO Eye.

$106bn The amount raised by listings on all world markets.

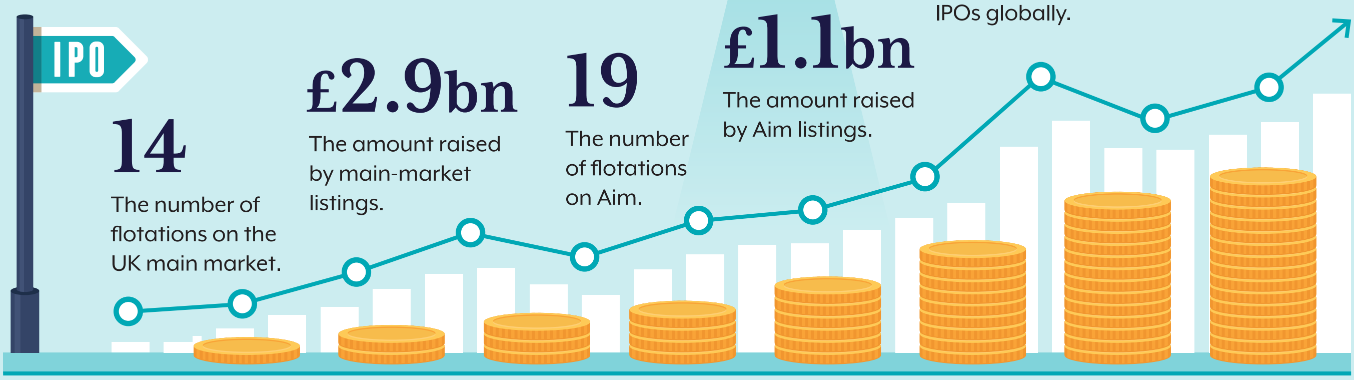
547 Total number of IPOs globally.

£1.1bn The amount raised by Aim listings.

19 The number of flotations on Aim.

£2.9bn The amount raised by main-market listings.

14 The number of flotations on the UK main market.



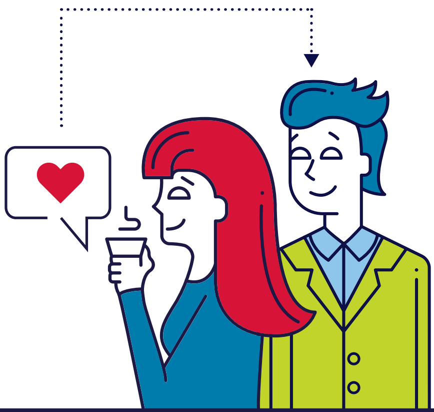
Source: EY

CHARLES STANLEY
Wealth Managers

DISCRETIONARY

Private Client Survey 2021

The close relationship our investment managers build with our clients enables us to listen to their needs and continually enhance the service we provide.



THE SERVICE

95%

of survey respondents are satisfied with Charles Stanley's day-to-day activities managing their wealth

92%

of survey respondents are satisfied with the range of products and services

RELATIONSHIP AND COMMUNICATION

95%

of survey respondents are satisfied with the level of personalised contact they receive from their Investment Manager

90%

of survey respondents are satisfied with the communication they receive from Charles Stanley

TRUST AND REPUTATION

96%

of survey respondents are satisfied overall with Charles Stanley

96%

of survey respondents agree that the range of products and services from Charles Stanley are meeting their individual needs and goals

95%

of survey respondents are satisfied with their Investment Manager

> My Investment Manager is fantastic. He is very approachable, personalises all emails and contact, and is always accessible and ready to talk. He is the reason I would recommend your services over any other. His level of personalisation and his excellent service are second to none.
>
> **Client comment**

+72 Net Promoter Score (NPS) for Investment Management clients survey respondents 'likely' to recommend Charles Stanley.

NPS = Promotors % - Detractors %

-100% 0% 100%

Investment involves risk. Investors may get back less than invested.

Details of the client survey can be found on our website www.charles-stanley.co.uk