



The charity law health-check

Brodies LLP

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Law and regulation is a good thing....

rather than charities and their trustees talking about “falling foul of the law” and regulation, look at how the law can help charities achieve their aims and objectives in a changing regulatory landscape

New fundraising expectations and oversight

a new *Scottish* approach

- a new Scottish Fundraising Complaints hub hosted by SCVO
- charity is the first port of call for complaints (policy in place?)
- still unhappy?
 - Scottish or UK charity?
 - confusion in public's mind... symbols on the TV
 - refer to the Independent Standards and Adjudications Panel for Fundraising in Scotland
 - non-statutory powers and sanctions
 - only 4 complaints so far
- “the fundraising guarantee”
- interaction with rest of the UK and lead regulator principle
- interaction with general good governance etc
- **data protection and information management and duties... GDPR**
 - <http://www.brodies.com/general-data-protection-regulation>

Constitutional matters (but not Brexit!)

- the new OSCAR Annual Return
 - “*when did the charity trustees last look at and consider the content of the charity’s governing document?*”
 - what is your answer?
 - Benedict Allen situations
 - “*I did not need rescuing*”
- using the Trustee Annual Report

Alphabet soup

- wider transparency obligations
 - [FATCA], AEOI, CRS, LEI, PSC....

Yes Minister

The Lobbying Act

- *“Charities should not be **gagged**, and they won’t be.”* Sir Stephen Bubb, chief executive of Acevo
- *“The Lobbying Act could have an absolutely **chilling** effect on debate and legitimate criticism.”* Martin Sime, then chief executive of SCVO
- *“We’ve had clear evidence that a number of campaigning groups have already decided not to campaign or not to join with other bodies to campaign on an issue because they are **frightened** of running foul of the act.”* Lord Harries

Lobbying

- a **Scottish** register - Lobbying (Scotland) Act 2016
- 12 March 2018 in force
- charities are **not** exempt
- impact on influencing and campaigning?
- “regulated lobbying”... *it’s good to talk?*
- register details of their interaction online with the lobbying register within 30 days and submit returns every 6 months
- volunteer v paid v less than 10 FTE employees
- the details to be registered include:-
 - person lobbied, the date, location, circumstances, purpose, the name of the person lobbying and on whose behalf
- put a policy in place

Business rates

- Barclay Review of Non-Domestic Rates
 - ALEOs [**now updated position**]
 - trading subsidiaries
 - independent schools
 - charity trading shops
 - sport
- read the blogs:- google...
 - Brodies blog Barclay Eccles

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- **payments from subsidiaries to parent charity**
- the legals
- payments by trading subsidiaries to their parent charity count as “distributions” for the purposes of company law and need to be considered and documented as such
- binding obligation – cannot be recognised at the reporting date if the payment only follows and becomes an obligation after that date

risk... and ‘notifiable events’

- ***D v Victim Support Scotland, December 2017*** Vicarious liability of charity for advice given in relation to claiming compensation from Criminal Injuries Compensation Authority. Relevant that charity advertised its ability to assist with such applications and that staff had received specialist training. It not relevant that no payment was made for the service.
- ***Armes (Appellant) v Nottinghamshire County Council (Respondent) Oct 2017*** Potential extension of vicarious liability for deliberate wrongs of volunteers and third parties carry out work for an organisation; could mean liability for the organisation even where all due diligence has been carried out and the duties have been delegated without negligence.
- **Inadequate insurance cover**...must consider all of the risks faced and decide whether or not insurance cover is warranted.
- **‘notifiable events’**

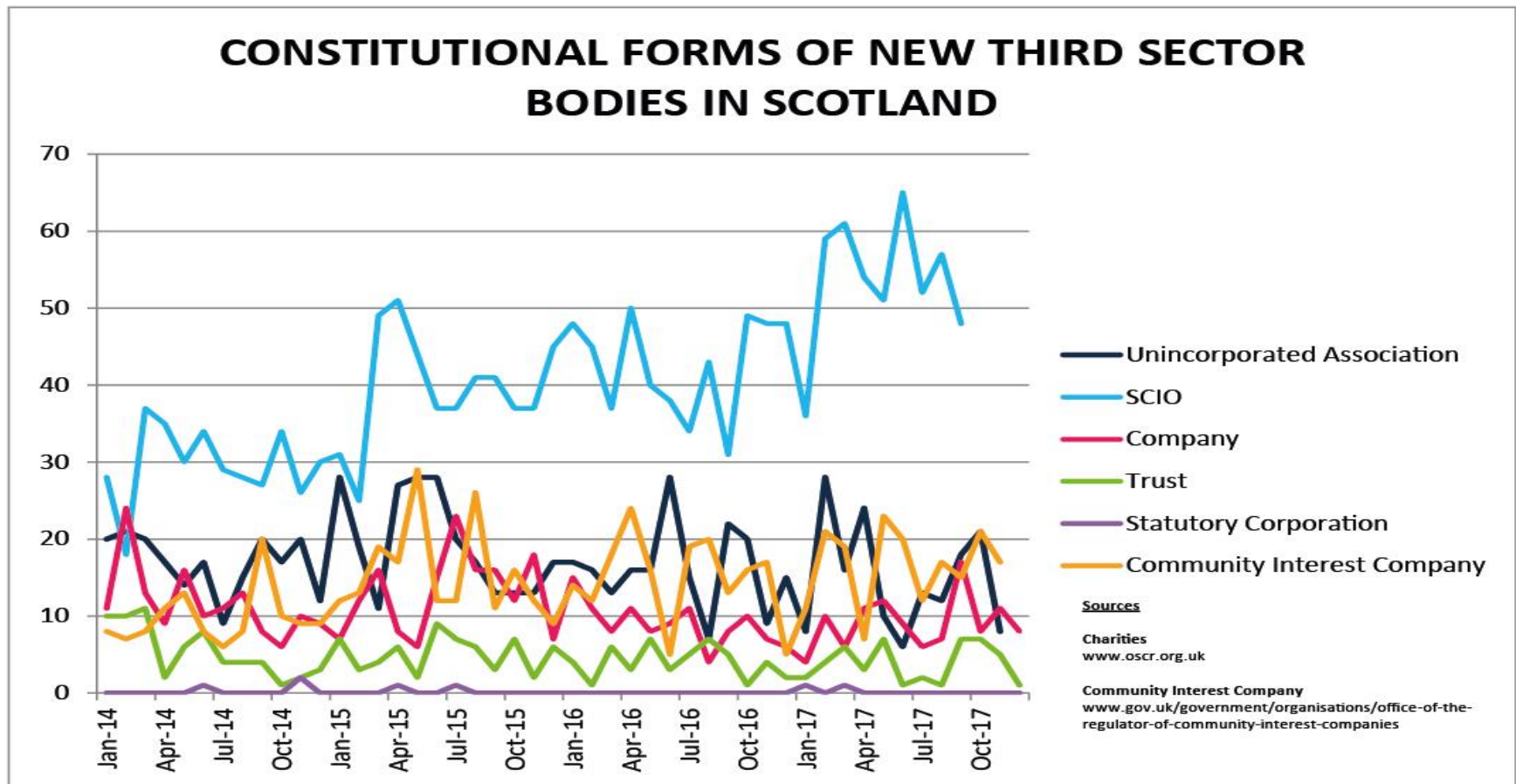
What it is to be a charity trustee...

- Charity Commission survey, November 2017
- values and behaviours to permeate throughout...
- what about members?



The rise of the SCIO... legal form selection

... and the end of the trust? and everything else?

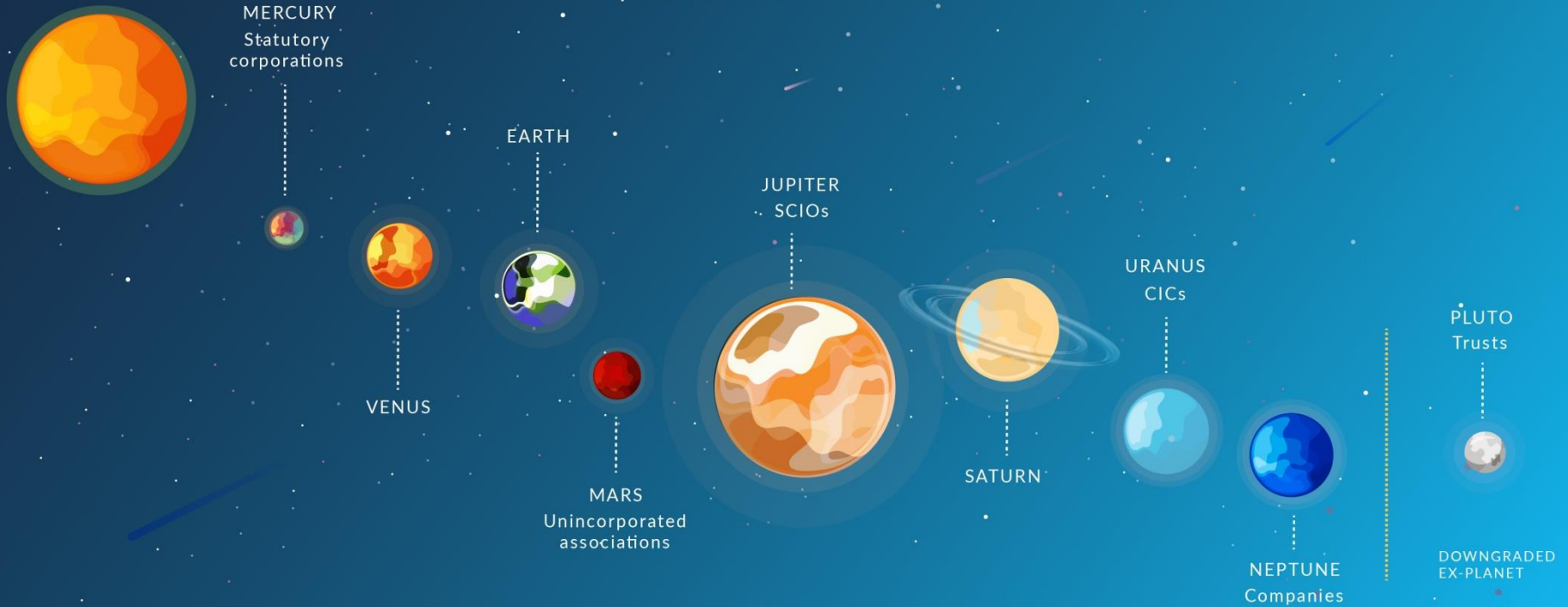


... or, if Elon Musk did charity law...

THE CHARITIES AND THIRD SECTOR “UNIVERSE”



The latest statistics show that SCIOs are far and away the most popular legal vehicle for new charities. They are Jupiter. In the shadows of that giant are companies and CICs. The sometimes dangerous gravitational pull of the unincorporated association remains. Trusts do seem to have gone the way of Pluto. However, the key point continues: the type of legal vehicle used must be selected with informed choice and kept under review.



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