

Charity Law Association legal update: 25 February to 27 May 2022

By Practical Law Private Client

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We are pleased to provide this update to members of the Charity Law Association (CLA) summarising developments in charity law and practice in the period 25 February to 27 May 2022.

All links in this update are to publicly accessible resources, such as Bailii case reports. Practical Law's resources specific to COVID-19 are free to access.

Practical Law subscribers can access additional information on all the developments in this update from our dedicated webpage for charity lawyers. Further details are provided at the end of this update.

Charities Act 2022

Implementation plan published

On 13 April 2022, the Department for Digital, Culture, Media and Sport (DCMS) published its *indicative plan* for implementation of the Charities Act 2022 (ChA 2022).

ChA 2022 received Royal Assent on 21 February 2022, but only section 41 is currently in force. All other provisions will come into force when the Secretary of State makes regulations by statutory instrument. Implementation will be led by the DCMS, working closely with the Charity Commission and other government departments.

The current intention is for the provisions to come into force in three groups at different points over the next 18 months, with the first group expected to come into force in Autumn 2022. For example, the provisions on ex gratia payments are due to come into force in Autumn 2022, changes to the restrictions on dispositions of and mortgaging charity land in Spring 2023, and charity merger reforms in Autumn 2023.

If all goes to plan, all provisions should be in force by Autumn 2023. The DCMS will update the implementation webpage as provisions come into force, to include links to updated or new guidance, and if intentions change.

The DCMS is also working to implement the non-legislative changes recommended by the Law Commission in its Technical Issues in Charity Law report that were accepted by the government. The DCMS aims to carry out this work (which includes updating existing guidance to provide more clarity) concurrently with implementation of the legislative provisions.

The DCMS has confirmed that it will complete a review of ChA 2022 within the statutory review period of 3 to 5 years following Royal Assent.

Regulator plans for full implementation by autumn 2023

On 25 February 2022, the Charity Commission published a *blog* on next steps in implementing the Charities Act 2022, which received Royal Assent the previous day.

Aarti Thakor, Director of Legal Services at the Commission, has confirmed that implementing the Act is one of the regulator's business priorities for the year ahead and that a plan has been developed which aims to gradually introduce the changes between now and autumn 2023.

Some of the changes will require secondary legislation and others changes to the Commission's systems and processes. The Commission will need to amend some of its guidance for charity trustees and for its own case workers, as well as some of its online digital services for charities. It will also need to make sure that all its relevant staff are trained on the changes.

The Commission has promised to let charities know when each of the relevant provisions come into force and consequential updates have been made to its guidance, or an online service has been amended. It will also make it clear when the implementation process has concluded.

Ukraine crisis

Regulator opens inquiries into charities linked to sanctioned Russian

On 22 April 2022, the Charity Commission announced that it had *suspended* Dr Viatcheslav Kantor as a charity trustee of the World Holocaust Forum Foundation (WHFF), after he was added to the list of designated persons subject to financial sanctions by the UK government. WHFF's trustees are prevented from parting with any of the charity's property without the Commission's consent.

The Commission has also opened inquiries into, and frozen the bank account, of the *Kantor Foundation* and the *Kantor Charitable Foundation*. The Kantor Trustees, of which Dr Kantor is a director, is the corporate trustee of both charities.

The regulator's position is that individuals subject to financial sanctions in the UK cannot discharge their duties as a charity trustee. The Commission has also launched an inquiry into, and frozen the bank account of, Genesis Philanthropy Group, another charity linked to sanctioned Russians.

Regulator alerts charities to risk of sexual exploitation, abuse and harassment of refugees

On 13 April 2022, the Charity Commission issued a *regulator alert* to warn charity leaders of the risk of sexual abuse, exploitation, and harassment faced by people in need of their assistance as a result of the Ukraine crisis.

The Commission has become aware that criminal groups are operating along Ukraine's borders and in neighbouring countries and has advised charities to be alert to the risk that such individuals may use the cover of charity to sexually exploit, abuse and harass displaced persons.

Charity trustees of charities operating in the area are urged to:

- Assess and manage sexual exploitation and abuse, and sexual harassment risks, as well as wider safeguarding risks in their charity and for its operations.
- Regularly review existing safeguarding policies and procedures to ensure they remain fit for purpose as the situation on the ground evolves.
- Ensure charity trustees, staff and volunteers are suitable and legally able to act in their positions, undertaking or updating vetting checks as appropriate.
- Implement any training plans, especially following new recruitment.
- Use the *Misconduct Disclosure Scheme*, if their charity is a signatory, when hiring staff and volunteers. If their charity is not yet a signatory, they should apply the principles of the scheme and sign up as quickly as possible.
- Make sure all those connected to their charity understand how, and feel able, to report concerns.

Charities that are working with partners must ensure that grant recipients and partner bodies are suitable and have in place appropriate safeguarding procedures. Where a registered charity supports or works closely with overseas partners or not-for-profit organisations that are not registered with the Commission, the regulator warns that it will hold the registered charity to account for the suitability and management of that relationship, including for its supervision of safeguarding risks.

The Commission has also highlighted the need to respond promptly and appropriately to any allegations or incidents that may arise, including reporting to all relevant agencies and regulators locally and in the UK. Charities are referred to the Commission's guidance on *reporting criminal incidents*.

New guidance for charities on dealing with large funding increases

On 28 March 2022, the Charity Commission updated its *guidance* for charities and charity trustees on commonly asked questions on responding to the humanitarian crisis in Ukraine. This now includes a new section to help charities deal with a large increase in funding. This advises charities to:

- Review whether they need to change the way they work and operate.
- Maintain clear records on decision-making, with supporting evidence, even during busy periods.
- Assess the risk of dealing with extra income, such as checking that the charity's financial controls remain suitable.
- Consider whether their reporting obligations may change.

It also directs charity trustees to its guidance *Charities and risk management (CC26)* for further support with identifying, assessing and managing risks.

Sanctioned individuals cannot act as charity trustees

The Charity Commission has *opened* a statutory inquiry into and frozen the bank account of Genesis Philanthropy Group, a charitable grant-giving trust for the advancement of the education of the public in the arts, culture and heritage of the Jewish people.

Three of the four founding trustees of the charity have been added to the list of designated persons subject to financial sanctions by the UK government relating to Russia. The Commission's position is that individuals subject to financial sanctions in the UK cannot discharge their duties as a trustee of a charity.

The regulator has published guidance for charities and charity trustees on responding to the humanitarian crisis in Ukraine.

New guidance for charities and charity trustees

On 16 March 2022, the Charity Commission published *new guidance* for charities and charity trustees on commonly asked questions on responding to the humanitarian crisis in Ukraine. This:

- Directs charities to the Commission's guidance *Charity emergency appeals: starting, running and supporting charitable emergency appeals (CC40)*.
- Advises those seeking to apply to register new charities with objects that relate to the Ukraine crisis to first consider whether supporting an established registered charity with relevant experience would be more efficient.
- Includes guidance on changing charitable objects to support the Ukraine crisis.
- Highlights the complexities of operating in a conflict zone and the need for charities to protect and safeguard their beneficiaries, volunteers and staff.

- Notes that the Foreign, Commonwealth and Development Office currently advises against all travel to Ukraine and no longer provides consular assistance in person. The Commission advises charity trustees to think very carefully about whether organising or participating in convoys is the most effective way to deliver humanitarian aid. It suggests that supporting local economies by buying goods close to the point of need may be a more practical and sustainable alternative. It also flags the need for charities that appeal for or purchase medicines to comply with the relevant regulations.
- Advises that all UK nationals and legal entities established under UK law must comply with UK financial sanctions, wherever their activities take place. It links to Office of Financial Sanctions Implementation (OFSI) [guidance for charities](#) on complying with financial sanctions and warns charities that they are responsible for checking whether the individuals and organisations they deal with are subject to such sanctions.
- Highlights the need to carry out appropriate and proper due diligence on any new individuals and organisations that a charity is considering giving grants to or using to help deliver its work. It also links to the Commission's [Know your partner](#) guidance.

The Commission says that it will regularly review this guidance.

Government advice for charities on sending humanitarian aid to EU

On 8 March 2022, in [response](#) to a written question in Parliament on what steps it is taking to provide technical expertise to UK charities seeking to send shipments of humanitarian aid to EU countries to support Ukrainian refugees, the government has advised that:

- The best way to help the Ukrainian people is to donate money through the Disasters Emergency Committee or other trusted charities.
- Most goods crossing borders require customs declarations and may be subject to checks. Duty and other border taxes may be payable on entry into other customs territories, such as the EU. This includes goods donated to charities and in-kind assistance, such as food, blankets, and clothing.
- Charities will need to follow UK export guidance and comply with any import rules and pay any taxes or duty owed in the EU or other country that the goods are being sent to, including Ukraine.

UK charities that need advice about transporting humanitarian aid to Ukrainian refugees are advised to contact the free-to-use Export Support Service helpline (0300 303 8955) or access support online (<https://www.gov.uk/ask-export-support-team>).

Regulator issues statement on implications for charities

On 2 March 2022, the Charity Commission published a [statement](#) by its CEO, Helen Stephenson, on the implications of the Ukraine crisis for charities. This:

- Directs charity trustees that have launched emergency fundraising appeals to the Commission's guidance on [running effective and impactful appeals](#) and on [holding, moving and receiving funds safely](#).
- Acknowledges that charities that operate in Russia may come under increasing pressure because of sanctions, difficulties in transferring funds and the general operating environment for civil society in Russia. It advises such charities to keep up to date with the latest situation on financial sanctions, by signing up to e-alerts from HM Treasury and referring to [guidance](#) from the Office of Financial Sanctions Implementation.
- It also urges charity trustees to consider the Commission's guidance on [managing risks when working internationally](#) and to follow Foreign, Commonwealth and Development Office [advice on travelling to Russia](#) to help keep staff, volunteers and funds safe.
- Reminds all charities that they should [know their donors](#) and consider the implications of accepting donations, including on their reputation. (For guidance on accepting, refusing and returning donations, see [Chartered Institute of Fundraising: Acceptance, refusal and return: a practical guide to dealing with donations \(May 2018\)](#).)

The regulator has also issued a [joint statement](#) with the Fundraising Regulator urging members of the public who wish to donate to give "safely" to a registered charity, and especially established charities with experience of providing emergency aid. It highlights the humanitarian appeal launched by the [Disaster Emergency Committee](#) (a coalition of 15 leading UK aid charities).

It also alerts members of the public who initiate informal fundraising appeals that are not linked to established registered charities of their ongoing responsibilities to oversee and manage donations and ensure they are applied in accordance with donors' wishes.

COVID-19

Lenient approach to charity meetings held outside terms of governing documents ends on 21 April 2022

On 25 March 2022, the Charity Commission updated its [COVID-19 guidance](#) to warn charities that its lenient approach to charities holding meetings outside the

terms of their governing documents is coming to an end.

Since the start of the COVID-19 pandemic, the Commission has generally taken an understanding and proportionate approach where charity trustees have held meetings on a remote or hybrid basis, or postponed or cancelled a required meeting (such as an annual general meeting), in the following circumstances:

- The charity's governing documents have not included rules allowing for this and the charity trustees have not reasonably been able to make prior changes to the governing document to allow this.
- Charity trustees have been able to show that they have considered all relevant factors and possible alternatives (such as, postponing or cancelling, or holding the meeting on a remote or hybrid basis) and have followed all the other rules on meeting governance.

However, as COVID-19 restrictions have now been lifted, the regulator has reviewed this flexible approach. From Friday 22 April 2022, it expects all charities that want to postpone or cancel a meeting, or to hold meetings online, by telephone or on a hybrid basis, to make sure their governing document allows them to do this. It may therefore be necessary for changes to be made to a charity's governing document to include such explicit rules.

Charity practitioners may wish to make their clients aware of this policy change deadline and offer to review provisions on meetings in governing documents, to ensure they are fit for purpose and future proofed.

Volunteering in England guidance updated for living with COVID-19 plan

On 7 March 2022, the Department for Digital, Culture, Media and Sport (DCMS) updated its [guidance](#) for voluntary organisations and groups in England on how to safely and effectively involve volunteers in their work during the COVID-19 pandemic. This now reflects the government's "Plan for living with COVID-19".

The updated guidance:

- Confirms that those with COVID-19 are no longer legally required to self-isolate. However, it advises volunteers to stay at home and avoid contact with other people if they have COVID-19 symptoms or have tested positive for COVID-19.
- A volunteer who lives with, or has stayed overnight in the household of, someone with COVID-19 is advised to volunteer from home if they can.
- Reflects the government's decision to revoke, from 15 March 2022, the requirement for vaccination as a

condition of deployment in health and social care in England.

Charity Commission

For the Charity Commission's guidance on, and regulatory action in connection with, the crisis in Ukraine, see [Ukraine crisis](#).

Guidance and policy

Charity Commission renews alert warning charities against using cash couriers

On 3 May 2022, the Charity Commission published an [updated alert](#), in partnership with SO15 Counter Terrorism Command, Metropolitan Police Service, renewing their advice to charities against using cash couriers. The original alert was published in 2017.

This follows changes to the law on carrying cash and continued cases involving the seizure of charitable funds held as cash by the police and officers of UK ports. The Commission defines a cash courier as a person who physically transports currency on their person or accompanying luggage from one jurisdiction to another. This could be a charity representative or a third party acting on behalf of a charity.

In summary, the regulator's advice for charity trustees is as follows:

- Not to use cash couriers unless there are exceptional reasons for doing so. If formal banking facilities are available but not used, the Commission expects charity trustees to evidence the exceptional circumstances for operating in cash and that they have managed the associated risks effectively. Failure to do so may be considered as misconduct or mismanagement of the charity.
- If other means of transferring funds are not available and cash couriers are used, the guidance sets out a non-exhaustive list of safeguards the Commission expects charity trustees to put in place and fully document, as a minimum, to discharge their duties. In each case, charity trustees will need to assess the risk to their charity, taking appropriate advice where necessary.
- Cash of £10,000 or more must be declared to UK customs when carrying it between Great Britain and a country outside of the UK. If travelling as a group with more than £10,000 in total (even if individuals are carrying less than that), a declaration must be made.
- Promptly report any seizures or forfeiture of charitable cash to the Commission as a serious incident.

Charity trustees are referred to HMRC's guidance [Taking cash in and out of Great Britain](#) for further information.

Practitioners who advise charities that work internationally and need to move money across borders will wish to make their clients aware of this renewed guidance.

Charity Commission proposes new registration data classifications

The Charity Commission has *published* proposals for new and reworded data classification codes for charities on the register. Currently, when registering online or updating details, charities are asked to classify their aims and how they achieve them using broad categories. The proposals aim to help the Charity Commission capture this data in a more precise way by asking charities to describe what they do using more granular categories.

A Charity Commission *blog* explains that the aim of the reworked categorisation of data is to inform future policy making and to enable advice on risk to be more accurately targeted.

Charities are invited to email the Commission at UserResearchTeam@charitycommission.gov.uk if they would like to test the new categories in a pilot exercise in April 2022. The aim of the pilot is to identify problems with, and gaps in, the proposed categories.

New guidance for charities on reporting safeguarding concerns

The Department for Digital, Culture, Media & Sport (DCMS) has issued guidance for charities on *reporting safeguarding concerns* about the behaviour or actions of an employee or volunteer. It was published on 10 March and updated on 16 March 2022.

This new guidance:

- Directs users to guidance published by other organisations, such as NSPCC's resources on keeping children and young people safe, Ann Craft Trust's guidance on safeguarding vulnerable adults, Bond's suite of resources to prevent sexual exploitation, abuse and harassment across the international development sector, NCVO's charity safeguarding website and Charity Commission guidance.
- Highlights the Charity Commission's confidential whistleblowing helpline.
- Includes advice on what a charity volunteer or employee must do if they receive information about a safeguarding concern and how the charity should respond. This highlights the need to make appropriate referrals to, and consult with, the charity's local Safeguarding Adults Board or Safeguarding Children Partnership within 24 hours.

Inquiries and regulatory case work

Charity Commission disqualifies two former trustees of independent school

On 20 May 2022, the Charity Commission *published* a *report* on its inquiry into Darul-Uloom School London (DUSL), a charity that operates an independent Islamic school for boys aged 11 to 19.

The Commission opened its inquiry following a serious incident report of an altercation on DUSL's premises, which required police intervention. It involved one of DUSL's then trustees, who was also the school safeguarding lead. As a result of the incident, the police searched the school and seized, under the Proceeds of Crime Act 2002, over £400,000 in cash, which had been kept in a wooden chest.

The Commission found that DUSL's trustees were responsible for serious mismanagement and misconduct in the administration of the charity which placed its funds, property and beneficiaries at significant risk, including by:

- Keeping significant sums of charitable funds in cash and storing them unsafely. Although the seized funds were ultimately returned, while held by the police, they were at risk of forfeiture and inaccessible to the charity.
- Failing to ensure that the independent school standards were met. Since 2013, Ofsted had rated the school as either "requires improvement" or "inadequate" and highlighted governance concerns.
- Failing to comply with their legal duties to submit DUSL's annual return, annual report and accounts on time.

The Commission has disqualified two former trustees of DUSL and issued two other trustees with an official warning in respect of their conduct. The report acknowledges that, during the Commission's engagement with DUSL, improvements had been made in the school's compliance with the independent school standards and in its internal financial controls.

The report highlights the need for all charities to have in place appropriately tailored internal policies that address the specific risks associated with the activities they undertake. Charity trustees should ensure that these policies are implemented and reviewed at appropriate junctures. The Commission warns that a failure to implement such policies could evidence misconduct or mismanagement in the administration of a charity and put its assets, beneficiaries and reputation at risk.

Regulator orders winding-up of charity that funded TV programmes inciting violence and hate speech

On 19 May 2022, the Charity Commission *published* a *report* on its inquiry into Islamic Research Foundation International (IRFI). IRFI's principal focus and expenditure had been on grant funding international satellite television channels (Peace TV) that, until November 2019, had broadcast Islamic programmes in the UK.

The Commission found misconduct and mismanagement by the charity trustees of IRFI, including:

- In their decision to continue to fund Peace TV despite Ofcom finding that it had repeatedly broadcast programmes that breached the Broadcasting Code, including programmes that incited violence and murder, and contained hate speech and abusive treatment.
- Failing to properly assess and manage the risks in making grants to the group of non-charitable companies that held the licence to broadcast Peace TV and failing to ensure that those funds were applied solely in furtherance of IRFI's charitable purposes. IRFI's funding had been used to pay Peace TV's core running costs. This expenditure fell outside IRFI's objects and had conferred private benefit on a non-charity, its staff and board members.
- Failing to identify and manage conflicts of interest appropriately (some of IRFI's charity trustees had also acted as directors of companies within the Peace TV group).

The Commission appointed an interim manager to take over the management and administration of IRFI and its property to the exclusion of the charity trustees. Ultimately, IRFI was found to be no longer viable, and it has been wound-up and dissolved by order of the Commission.

Prior to opening its inquiry, the Commission disqualified IRFI's founder from acting as a charity trustee and from holding senior management functions in any charity in England and Wales. This was upheld on appeal to the charity tribunal, and he was disqualified for seven and a half years.

The inquiry report highlights the care that charity trustees must take when making grants to a connected non-charitable organisation to ensure that they only fund activities, services or outcomes that further their charity's purposes for the public benefit, and for no other purpose. They must also ensure that grant funding does not result in more than incidental private benefit, carry out appropriate checks on the non-charity and verify the end use of the charity's funds.

Charity Commission recovers misapplied funds from charity trustees who profited from sports charity

The Charity Commission has *published* a *report* on its inquiry into the sports charity Dream It Believe It Achieve It. The inquiry found that:

- There had been significant breaches of trust in failing to manage conflicts of interest in respect of payments made by the charity to companies connected to two former charity trustees, Mr and Mrs Dimbylow. This resulted in the Dimbylows receiving unauthorised financial benefits in the region of £1 million.
- Mr Dimbylow had applied to register the charity with the intention of extracting funds from it. The Commission had advised that it was not acceptable for him and his wife to act as charity trustees and receive a salary from the charity. He then successfully registered the charity with four charity trustees, including himself and his wife, on the basis that they would not be paid. However, the charity was registered with the Commission's model governing document amended to remove restrictions on payments to connected parties, a modification that was not drawn to the regulator's attention at registration.
- The charity had raised over £6 million via scratch-card lotteries run by an external lottery manager (ELM). However, only £300,000 or 5% of this was applied for the charity's purposes. Approximately £4.2 million or 70% was paid to the ELM for their services.

The regulator also found that such serious mismanagement and misconduct might not have occurred if the other two charity trustees had fulfilled their duties and been actively involved in the charity's administration.

Mr Dimbylow has been permanently removed as a charity trustee and Mrs Dimbylow signed a voluntary undertaking not to act as a charity trustee again. A High Court claim issued by the Commission to recover misapplied charity funds was settled by the Dimbylows following mediation. The charity is in the process of being wound up.

The Commission referred the activities of the ELM to the Fundraising Regulator which, being satisfied with the response it received from the ELM, took no further action. The report warns charity trustees that failing to ensure that arrangements with professional fundraisers and commercial participators comply with applicable rules will generally amount to misconduct and mismanagement of the charity's affairs. It also advises charity trustees to take professional advice as appropriate on proposed contracts with commercial organisations and be satisfied that the terms are in the best interests of the charity.

Charity trustees censured for failing to control use of social media for political campaigning

On 25 March 2022, the Charity Commission [published a report](#) on its inquiry into Humanity Torbay. The charity's activities included the provision of a drop-in centre that provided the local community with education and advice on health, wellbeing, housing, employment, and referrals to local food banks.

The inquiry found mismanagement and misconduct by the charity trustees in failing to control and prevent the charity's social media pages being used to publish inappropriate political campaigning material. Despite reassurances given to the Commission by the charity trustees, the charity's founder and chief executive officer had continued to use the charity's Facebook page to post personal political views that did not support the charity's purposes.

The Commission also found that the charity trustees had failed to maintain appropriate financial controls for the charity. The founder subsequently left the charity, which has been wound up and removed from the register of charities. The Commission secured a voluntary undertaking from the founder not to act as a charity trustee or hold any office of employment with senior management functions in a charity for 4 years.

The inquiry report reminds charity trustees that:

- Any political or campaigning activity by a charity must be undertaken only in the context of supporting the delivery of its charitable purposes.
- They must ensure that they have adequate oversight over their charity's campaigning and political activity and be mindful of maintaining their charity's party-political independence.

In this case, as the Facebook page was originally set up and owned by the founder, the charity trustees were unable to control it and remove all inappropriate posts made in the charity's name.

Charity Commission uncovers serious mismanagement of independent schools

The Charity Commission has published reports on its inquiries into [Hope House School](#) (HHS) and [Albayan Education Foundation Limited](#) (AEFL). HHS caters for pupils with special educational needs, whereas AEFL ran the Birmingham Muslim School (BMS) and was also involved in poverty relief in Syria and Turkey.

In each case, the Commission found multiple instances of misconduct and mismanagement by charity trustees, for instance:

- HHS's charity trustees were over reliant on, and failed to supervise, a dominant charity trustee, who was also HHS's principal (Trustee A). They allowed Trustee A to breach internal financial controls and obtain

unauthorised personal benefits by making payments to family members and bringing them on school trips, including overseas.

- They permitted Trustee A's husband to act as a volunteer in such a way and for such a period that he accrued employment rights and had to be given a salaried role at the school. They also allowed the school's lease to expire after expending significant sums developing the site, thereby risking loss of funds had the landlord decided not to renew the lease.
- The Commission also found that HHS's current trustees had not adequately addressed concerns identified by Ofsted or taken all appropriate steps to improve the school's safeguarding practices and training, risk assessments, and health and safety.
- AEFL's charity trustees persistently failed to ensure BMS met the Independent School Standards, and it was rated as inadequate by Ofsted. They failed to comply with multiple DfE directions to improve standards at BMS and did not report these to the Commission as serious incidents. BMS was eventually closed and struck-off the Register of Independent Schools.
- AEFL's charity trustees also failed to adequately oversee operations in Turkey and Syria, as demonstrated when the Commission uncovered photos of an employee of the charity assembling firearms at a Syrian refugee camp. AEFL had no list of its overseas partners or evidence of due diligence checks completed on them.

In both cases, an interim manager was appointed to the exclusion of the charity trustees.

The regulator secured voluntary undertakings from three charity trustees of HHS that they would not act as a charity trustee or trustee for a charity for between eight and ten years. It disqualified the chair of trustees of AEFL, who was also headteacher of BMS, for 12 years and two other charity trustees for 10 years.

Alternative cancer therapy organisation removed from register after Charity Commission challenged its public benefit

On 8 March 2022, the Charity Commission issued a [press release](#) announcing that Gerson Support Group (GSG), an organisation that offered alternative therapies to people living with cancer, had been removed from the register of charities and is being wound up, after the regulator identified concerns about the extent to which it was providing public benefit.

GSG was registered as a charity in 1997 to relieve sickness and to preserve and promote good health by providing support to cancer patients. It also aimed to advance public education in the "Gerson nutritional therapy", based on a specific organic vegetarian diet, nutritional supplements, and enemas.

In 2018, the Commission reviewed and updated its approach to assessing whether organisations that use or promote complementary and alternative medicine (CAM) therapies are charities. The review concluded that, to satisfy the public benefit requirement and qualify for charitable status, an organisation must provide evidence that the therapy it offers can deliver the claimed benefits. A CAM organisation that claims a therapy can cure a particular condition must therefore provide objective scientific evidence for its claims. By contrast, an organisation that focusses on offering comfort and relief to patients may be able to rely on more subjective evidence, such as patient reported outcomes, to demonstrate its public benefit. This approach is applied at the point of registration and the Commission also takes steps to ensure that charities already on the register meet these requirements.

In response to the regulator's concerns, GSG's trustees acknowledged that the evidence around Gerson nutritional therapy, and its claims to treat cancer and its symptoms, no longer met the Commission's criteria for registration as a charity. GSG has therefore been removed from the register of charities and its trustees are in the process of winding it up, having applied its remaining funds to other charitable organisations.

The Commission has also published a [blog](#) on regulating charities that offer CAM therapies. This confirms that its work scrutinising the activity of CAM organisations is ongoing and it is currently engaged in several cases involving concerns about such organisations. The Commission has encouraged all CAM charities to consider the public benefit requirement and ensure that their own activities deliver clear public benefit.

Appointment of Chair

Orlando Fraser confirmed as Charity Commission Chair

The government has [announced](#) its appointment of Orlando Fraser as the new Chair of the Charity Commission. Mr Fraser's three-year term begins on 25 April 2022.

Mr Fraser appeared in front of MPs on the Digital, Culture, Media and Sport Select Committee on 24 March 2022, following which the Committee rejected the appointment. However, the government was not obliged to follow the Select Committee's advice.

MPs reject Orlando Fraser as next Charity Commission Chair

The Digital, Culture, Media and Sport Committee has [rejected](#) the government's preferred candidate for the next Chair of the Charity Commission, Orlando Fraser.

Mr Fraser appeared before the Committee for pre-appointment scrutiny on 24 March 2022.

The Committee recognised that Mr Fraser had qualifications and experience that could make him suitable for the role and found no grounds for concern about him as an individual. However, as it had serious concerns about the selection process, it refused to formally endorse his appointment.

The Committee said that the Department for Digital, Culture, Media and Sport should have re-run the selection process after Martin Thomas resigning before taking up the post. Failing to do so had resulted in "another archetypal and unimaginative choice" from a shortlist that lacked diversity.

The government has two months to respond to the Committee's report but does not have to follow the advice. In 2018, the government went against the Committee's advice in appointing Baroness Stowell.

Orlando Fraser selected as preferred candidate for Charity Commission Chair

On 8 March 2022, the Culture Secretary, Nadine Dorries, [announced](#) Orlando Fraser as preferred candidate for the next Chair of the Charity Commission.

Mr Fraser is a [commercial barrister](#), practising at 4 Stone Buildings. He was appointed Queen's Counsel in 2014. He served on the board of the Commission from 2013 to 2017 and has also served on the Civil Justice Council and the National Council for Voluntary Organisations' (NCVO) advisory council.

Mr Fraser will now appear before MPs on the Digital, Culture, Media and Sport Select Committee for pre-appointment scrutiny. If approved, his appointment will be for a term of three years. He will take over from Ian Karet who is currently serving as Interim Chair after Martin Thomas resigned as Chair of the regulator before taking up the post.

NCVO and the Association of Chief Executives of Voluntary Organisations (ACEVO) have released a [joint statement](#) expressing disappointment that the government ignored their calls for the appointment process to be restarted. While acknowledging that Mr Fraser has extensive experience of regulation and charities, they have also raised concerns about his party-political links.

Case

Charity trustees permitted to adopt climate change focused investment policy (High Court)

The High Court has made a declaration permitting the trustees of two charitable trusts (the Ashden Trust

and the Mark Leonard Trust) to adopt a policy that aligns their charities' investments with their charitable purposes, prioritising climate change outcomes, even if it risks diminishing financial returns by excluding a significant part of the market.

This widely anticipated decision provides much needed clarity on the effect of *Harries v Church Commissioners for England* [1991] 10 WLUK 372 (Bishop of Oxford case). Green J held that the Bishop of Oxford case did not lay down an absolute prohibition on making investments that directly conflict with the charity's purposes. Charity trustees have a discretion in relation to the exercise of their powers of investment, including in respect of potential situations of direct conflict.

This decision, which clarifies the law on charity trustees' duties when exercising investment powers in the modern context of climate change, and generally, will be welcomed by the charity sector and other investors. We now expect the Charity Commission to publish its revised guidance on charities and investment matters (CC14), having taken this decision into account.

Case:

- *Butler-Sloss and others v Charity Commission for England and Wales and another* [2022] EWHC 974 (Ch) (29 April 2022) (Green J).

Fundraising

Fundraising Regulator considers risks in accepting charitable donations of cryptocurrencies and using NFTs

On 3 May 2022, the Fundraising Regulator (FR) [published](#) a thought-piece on the opportunities and drawbacks for charities in accepting donations of cryptocurrencies or engaging with non-fungible tokens (NFTs) to support their fundraising.

On the opportunities, the FR suggests that new donors might be found among those who engage in cryptocurrencies and NFTs. Also, as cryptocurrencies are unique and identifiable, funds can be traced through supply chains, so donors can see in detail how a charity has spent their donation. This makes it possible to draw a clear link between a donation and the charitable activity that it funds, which could improve donor engagement.

On the drawbacks, the FR highlights the lack of transparency, volatility and the environmental impact of producing cryptocurrencies and NFTs. The regulator advises charity trustees to take appropriate advice and consider the standards set out in the Code of Fundraising Practice before deciding whether accepting donations

of cryptocurrencies or engaging with NFTs is in the best interests of their charity.

Fundraising Preference Service strengthened following independent evaluation

The Fundraising Regulator (FR) has [published](#) details of the [improvements](#) it has made to the Fundraising Preference Service (FPS) in response to recommendations made in a November 2020 independent [evaluation](#) of the service.

The FPS enables members of the public to stop direct marketing from charities. The FR has strengthened the service by:

- Enabling members of the public to request in one online transaction that up to 10 charities stop sending them direct marketing. The previous maximum was three, although it has always been possible to suppress up to 20 charities at a time by contacting the FPS by telephone.
- Making it easier for charities to see if a suppression request has been made on behalf of someone else. This will flag that a potentially vulnerable person is involved, enabling charities to deal with these requests swiftly.
- Added more guidance on its website to [help charities understand what they need to do when they receive a suppression request](#) and to [support the public to use the FPS to stop unwanted charity communications](#).

The FR has also introduced a process to submit an FPS request on behalf of someone who has died and is working to promote awareness of the FPS among both members of the public and charities.

Regulator encourages charity fundraising organisations to self-report breaches of fundraising standards

The Fundraising Regulator (FR) has published details of a [new process](#) for charities and other fundraising organisations to self-report breaches of the Code of Fundraising Practice (Code).

Organisations that carry out charitable fundraising in England, Wales or Northern Ireland are encouraged to report incidents relating to charitable fundraising where they consider they have, or may have, breached the standards in the Code and such breaches pose an actual or potential risk to the public, the charity sector, or public confidence in fundraising more generally. Organisations should not self-report every complaint they receive about their charitable fundraising.

There is no formal obligation to self-report; the purpose in doing so is to enable the FR to give organisations advice on the appropriate steps to take if the Code has been breached. The FR says that it will handle reported cases fairly and proportionately and, in most circumstances, formal regulatory action will not be necessary

A person who completes the FR's online self-reporting form should have the appropriate level of authority to report on behalf of their organisation. If the organisation is a registered charity, the FR expects the charity trustees to be informed about the incident before it is reported. Similarly, a third-party fundraiser should discuss with their charity partners whether it is more appropriate for the charities, or the fundraising organisation, to lead on self-reporting.

Organisations are reminded that, depending on the nature of the incident, they may also be required to report to other regulatory bodies, such as the Information Commissioner's Office or the Charity Commission.

Organisations that carry out fundraising in Scotland are advised to contact either:

- The FR about an incident if they are a charity registered primarily with the Charity Commission for England and Wales or the Charity Commission for Northern Ireland and have their main office in those countries.
- The Scottish Fundraising Adjudication Panel if they are a charity based in Scotland and are registered in Scotland with the Scottish Charity Regulator (OSCR).

The development of a self-reporting pathway was included in the FR's objectives for 2022.

Charity's use of funds raised for restricted purposes breached fundraising standards

On 9 March 2022, the Fundraising Regulator (FR) published reports on its recent investigations into complaints about the charity fundraising practices of *The Ehlers-Danlos Support UK* (EDS UK) and *Penny Appeal*.

The FR found that the Code of Fundraising Practice (Code) had been breached in both cases. The EDS UK decision will be of particular interest to practitioners:

- EDS UK raised funds for a specific research project, based on a particular hypothesis. The academic researcher then withdrew from that project, but submitted a proposal for an alternative research project, to test a different hypothesis, that was approved by the charity.

- The charity sought the Charity Commission's advice on whether it could spend the funds raised on the new project and was advised that it needed to make its own assessment about whether the appeal had failed. The charity decided that the overall purpose had not changed and that the appeal had therefore not failed.
- The FR disagreed with the charity's assessment. It found that the fundraising materials gave donors the clear impression that funds were being raised for a specific research project and did not include wording setting out a secondary purpose for the funds if the original intended purpose failed. Allocating the funds raised to a new project was a change of purpose that would not have matched the donor's expectations of how their donations would be used.
- EDS UK had therefore breached the sections of the Code that required: all funds raised for a particular cause to be used for that cause; donations to be used in line with any representations made in fundraising materials about how funds would be used; and fundraising materials to include a statement about what would happen if the total funds received were insufficient or exceed the target (see section 2.7 of the Code).

The FR has recommended that the charity treat the appeal as failed and seek urgent advice from the Commission about the process it should follow to inform donors.

Also, the FR found that the Penny Appeal had continued to send fundraising text messages, despite the complainant having requested to opt-out and then using the Fundraising Preference Service

DCMS publishes review of prize and sales limits for large society lotteries

On 1 March 2022, the DCMS published its [review](#) of prize and sales limits for large society lotteries.

This relates to the Gambling Act 2005 (Variation of Monetary Limits) Order 2020 (*SI 2020/307*). The Order increased the amount of money that society lotteries, such as those run by charities and sports clubs, can raise for good causes. The government committed to reviewing the early impact of the changes a year after implementation in March 2020.

The Order raised the then applicable limits as follows:

- Annual sales. The annual sales limit was increased from £10 million to £50 million.
- Proceeds. The per-draw sales limit was increased from £4 million to £5 million.
- Prizes. The maximum per-draw prize limit was increased from £400,000 to £500,000.

At the same time, the Gambling Commission introduced enhanced transparency measures, requiring society lotteries to provide more information to consumers about the use of proceeds and the likelihood of winning a prize.

The review cautions that it is too soon to come to a definitive view on the impact of the increased limits, particularly as the revised limits have applied during the COVID-19 pandemic, when changes in consumer behaviour may have had a distorting effect. However, early indications suggest that the new limits are working effectively and are having their intended effect of allowing the society lotteries sector to grow and return more for good causes, while at the same time protecting the unique position of the National Lottery.

The Gambling Commission is satisfied that overall compliance with the new transparency measures is high.

The government concludes that there is no current need for any further policy changes.

Charity tax

Gift Aid

HMRC clarifies Gift Aid rules on acknowledging donor generosity and naming rights

On 21 April 2022, HMRC updated its detailed guidance notes for charities on [Gift Aid](#), to clarify when acknowledging a donor's generosity will be treated as a benefit that may prevent a donation from qualifying for Gift Aid relief.

The guidance says that:

- A simple acknowledgement of an individual donor's generosity will not count as a benefit for Gift Aid purposes, provided it is not an advertisement or some form of business sponsorship. A commemorative type of plaque, recording the name of the individual donor and that they provided a donation, will not be considered a benefit. Whereas a sign which also promotes a business will be an advert and considered a benefit (*section 3.19.1*).
- Naming a building or part of a building after a generous individual donor will also not be considered a benefit if the naming does not act as an advertisement or sponsorship for a business. If separate advertisement or sponsorship agreements are entered into, these transactions will be outside the scope of the Gift Aid scheme (*section 3.19.8*).

The guidance no longer says that naming of a building, or part of it, must be unsolicited and not expected in return for the donation to not be a benefit for Gift Aid purposes.

2022 Spring Statement: income tax reduction

The Chancellor of the Exchequer, Rishi Sunak, delivered his Spring Statement to Parliament on 23 March 2022.

One of the main announcements was a reduction in the basic rate of income tax from 20% to 19% from April 2024, dependent on certain fiscal principles being met in the future. The impact of the income tax reduction on charities will be softened by a three-year transition period for gift aid relief, allowing the income tax basic rate relief to remain at 20% until April 2027.

Sources:

- [HM Treasury, Spring Statement 2022](#) (landing page).
- [HM Treasury, Spring Statement 2022](#).
- [HM Treasury, Spring Statement 2022: Tax plan](#).
- [HM Treasury, Spring Statement 2022: Speech](#).
- [HM Treasury, Spring Statement 2022: Policy costings](#).
- [HM Treasury, Spring Statement 2022: Factsheet on personal tax](#).
- [HMRC, Spring Statement 2022: Tax-related documents](#) (landing page).

Finance Act 2022: changes to cultural reliefs

On 24 February 2022, the Finance Bill 2022 received Royal Assent, becoming the Finance Act 2022 (FA 2022).

Sections 17 to 22 of FA 2022 amend the rules in the Corporation Tax Act 2009 on Theatre Tax Relief, Orchestra Tax Relief and Museums and Galleries Exhibition Tax Relief (together, known as the cultural reliefs). These provisions are designed to:

- Provide support to the arts and cultural sector, as it seeks to recover from the economic impact of the COVID-19 pandemic.
- Clear up ambiguities within the legislation and reinforce the government's original policy intent of the cultural reliefs (potentially narrowing their scope).

Sources:

- [Lords Hansard: Royal Assent](#).
- [UK Parliament: Finance Act 2022](#).

Other items of interest

Fifth money laundering directive: Law Society guidance on trusts that must be registered with HMRC

On 6 April 2022, the Law Society published guidance to assist corporate lawyers in determining whether

various trust arrangements occurring in a transactional context fall within the scope of the extended trust registration and disclosure requirements arising from the implementation of the Fifth Money Laundering Directive ((EU) 2018/843), under which information about trusts and their beneficiaries must be registered with HMRC's Trust Registration Service. This extension brings within the scope of the TRS regime all non-taxable UK express trusts, unless they are subject to one of the specific exclusions listed in Schedule 3A (Excluded trusts) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The guidance identifies a range of trusts that commonly arise in a variety of corporate or commercial transactions and sets out the Law Society's generic analysis of whether they are express trusts, and if they are likely to benefit from an exclusion from the TRS regime. The type of trust arrangements considered include:

- Shares held on trust by a seller pending registration of the transfer, or by a nominee on an ongoing basis.
- Sums held in an escrow account or retention amounts held by a buyer under a share purchase agreement.
- Various trust arrangements arising on a business sale (including in respect of the benefit of assigned contracts and those arising under wrong pocket provisions).
- Trusts arising on a rights issue or open offer, or on an initial public offering or listing pending the shares being dematerialised.
- Consideration paid on the squeeze out of minorities and held on trust under section 981(9) of the Companies Act 2006.
- Holding security granted in connection with secured loan notes.
- Trusts created within a partnership or limited partnership arrangement.

The guidance also highlights that where a trust is within the scope of one of the Schedule 3A exclusions, this disapplies the registration requirement only and its trustees will remain subject to the record keeping obligations under regulation 44 of the MLR 2017, under which they must maintain accurate and up-to-date written records of all beneficial owners of the trust and provide such records on request to any law enforcement body.

In addition to this guidance, the Law Society has also published non-corporate guidance aimed at helping those undertaking private client work to navigate the extended trust registration requirements.

Sources:

- [Trust Registration Service: Legal Sector \(Corporate\): guidance.](#)

- [Trust Registration Service: Legal Sector \(Non-Corporate\): guidance.](#)
- [Law Society notice.](#)

New Land Registry Practice Guide 82 on electronic signatures

On 28 March 2022, the Land Registry (LR) published [Practice Guide 82: Electronic signatures accepted by HM Land Registry \(PG82\)](#), bringing together its guidance on electronic signatures.

Most of the material in PG82 was previously contained in substantively the same terms in the LR's other practice guides. PG82 includes the LR's guidance for using electronic signatures for the execution of deeds and for signing statements of truth (previously in [Practice Guide 8: Execution of deeds](#) and [Practice Guide 73: Statements of truth](#) respectively). The LR has also updated various other practice guides to refer to the new PG82.

PG82 sets out the LR's requirements for Mercury signatures and conveyancer-certified electronic signatures (sometimes previously referred to as "witnessed electronic signatures"). It also discusses the use of "other electronic signatures", which (provided it demonstrates an intention to be bound by the document or statement) includes a name typed at the end of an electronic document or email, or a scanned manuscript signature added to an electronic document.

The signature table at Appendix 1 summarises which applications, dispositions and dealings may be signed using Mercury signatures, conveyancer-certified electronic signatures or "other electronic signatures". Appendix 2 contains an example of an acceptable certificate for conveyancer-certified electronic signatures, confirming that the requirements in PG82 have been met.

PG82 also includes the LR's interim guidance on amending dispositive deeds signed with conveyancer-certified electronic signatures. In addition, PG82 discusses:

- Mixed signing, where counterparts are used to enable one party to sign in wet ink (either conventionally or by Mercury signing) and another with a conveyancer-certified electronic signature. Parties may also sign counterpart deeds using different electronic signature platforms, provided the PG82 requirements are observed. Mixed signing where a signatory signs in wet ink and the witness with a conveyancer-certified electronic signature (or vice-versa) is not acceptable.
- The use of Mercury signing or conveyancer-certified electronic signatures by "authorised signatories"

signing on behalf of a company under section 44(2)(a) of the Companies Act 2006.

- "Qualified Electronic Signatures", which can currently only be used by firms taking part in a pilot. The LR hopes Qualified Electronic Signatures will be available more widely in due course.

Corporate transparency: government White Paper on corporate transparency and register reform

On 28 February 2022, BEIS published a White Paper setting out its policy on corporate transparency and register reform. In particular, it covers, among other things:

- New statutory powers and responsibilities for the Registrar, including a new statutory function to promote and maintain the integrity of the register, a new power to query information either before it is placed on the register or post-registration, expansion of its administrative removal powers, power to require documents to be delivered by electronic means, changes to proper delivery requirements, and powers relating to unauthorised registered office addresses.
- Identity verification and other measures relating to directors, beneficial owners and third-party agents, including verification of identity for Companies House purposes, increased information held on shareholders, PSCs and RLEs, and implementing of the ban on corporate directors.
- Increased powers for Companies House to share data with law enforcement and regulatory bodies.
- Privacy mechanisms in relation to personal information on the register, including suppression of personal information and sensitive addresses.
- Changes to how companies report their financial information to Companies House, including mandatory filing of accounts in digital format, a reduction in the filing options available for small companies accounts and the requirement for an eligibility statement for dormant company accounts.

Sources:

- [Corporate Transparency and Register Reform White Paper: policy overview and response to final consultations](#).
- [Corporate transparency and Companies House register reform: impact assessment](#).
- [Exceptions to prohibition of corporate directors set out in the SBEE Act \(2015\): impact assessment](#).
- [Statement on corporate transparency and economic crime measures](#).

Practical Law's resources for charity practitioners and charities

Our resources for charities and charity practitioners can be accessed from a dedicated webpage, [Practical Law for charity lawyers](#).

This brings together our practice notes, standard documents and clauses with drafting notes, legal updates, legislation and case trackers and answers to queries on key areas of charity law and practice. It also links to our other practice areas and to external websites that we consider charity practitioners are likely to find most useful.

A link to the "For charity lawyers" webpage can be found under the Collections heading in the Browse Menu tab at the top of any page on the Practical Law website.

All of our charities law and practice resources can also be found under the [Charities](#) topic in the [Private Client](#) practice area page.

Charities updates

All of the developments described above have been covered, usually in greater detail, in our [legal updates](#).

Weekly updates

Practical Law Private Client produces a weekly email (received by subscribers on Friday mornings) that includes developments of interest to charity practitioners.

Practical Law subscribers can request any of our weekly emails by following these instructions:

- Log in to our [website](#).
- Click on 'Email preferences', under the 'Account' tab in the top right-hand corner of the main menu.
- Here you can select the emails you wish to receive.
- Save your preferences by selecting the button at the bottom of the page.

New and updated resources for charity practitioners

Charity incorporation: new pre-merger vesting declaration

We have published new [Standard document, Charity incorporation: pre-merger vesting declaration](#). This is a declaration by charity trustees, made under section 310 of the Charities Act 2011, vesting

legal title to the charity's property in a charitable incorporated organisation (CIO) when restructuring an unincorporated charity as a CIO.

For our detailed guidance on charity incorporation projects, see [Practice notes, Charity incorporation: overview](#) and [Charity incorporation: key issues](#).

Charities Act 2022

To keep up to date with progress of the implementation of the Charities Act 2022, see [Charities Act 2022 tracker](#). For detailed guidance on the changes that the Act will make to charity law and practice, see [Practice note, Charities Act 2022: changes to law and practice](#).

We are continually reviewing and updating these resources.

Ask

Practical Law Private Client publishes questions we receive from subscribers, together with replies from the [Practical Law Private Client team](#).

Practical Law subscribers can browse these queries by selecting the "Ask" tab at the top of the [Private Client practice area](#) page, see [Ask: Private Client](#).

Published questions and answers of particular interest to charity practitioners can be found by selecting the charities tab under the "Browse queries by topic" heading at bottom the page, see [Ask Charities](#).

You can also filter your search results to show published questions and answers by selecting "Ask" as the resource type in the search filters.

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