



Trustees' investment duties

John Maton - Assistant Director of Legal Services

Yetunde Komolafe - Policy Lawyer

Charity Commission for England and Wales

9 June 2022



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INTRODUCTION



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Legal context

- Meaning of ‘investments’
- Financial investment v social, programme-related or mixed motive investments
- Case law



Harries v Church Commissioners for England [1992] 1 WLR 1241



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Trustee duties generally

Vice-Chancellor Sir Donald Nicholls:

“It is axiomatic that charity trustees, in common with all other trustees, are concerned to further the purposes of the trust of which they have accepted the office of trustee. That is their duty. To enable them the better to discharge that duty, trustees have powers vested in them. Those powers must be exercised for the purpose for which they have been given: to further the purposes of the trust. That is the guiding principle applicable to the issues in these proceedings. Everything which follows is no more than the reasoned application of that principle in particular contexts.”

Harries v Church Commissioners for England [1992] 1 WLR 1241 at [1246]



The starting point in relation to financial investments

Vice-Chancellor Sir Donald Nicholls:

“Prima facie the purposes of the trust will be best served by the trustees seeking to obtain therefrom the maximum return, whether by way of income or capital growth, which is consistent with commercial prudence. That is the starting point for all charity trustees when considering the exercise of investment powers. Most charities need money; and the more of it there is available, the more the trustees can seek to accomplish.”

Harries v Church Commissioners for England [1992] 1 WLR 1241 at [1246]

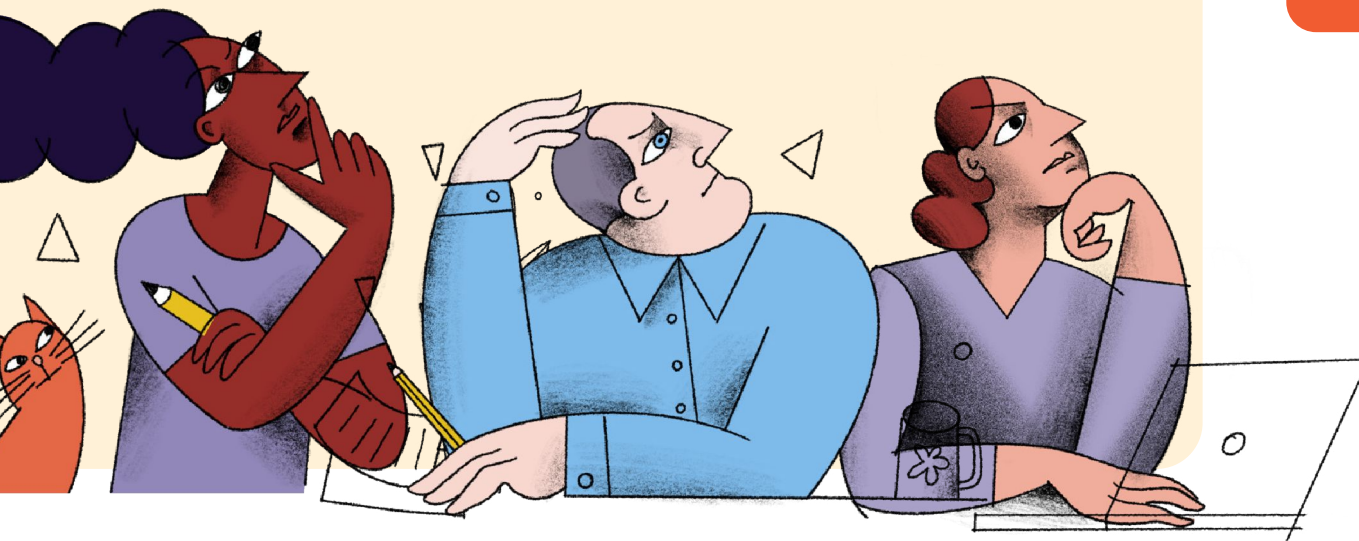


Non-financial considerations when making investments

- Direct conflict
- Indirect conflicts
- Other cases where trustees are justified in departing from what would otherwise be their starting point



**Butler-Sloss & Ors v The
Charity Commission for
England and Wales & Anor
[2022] EWHC 974 (Ch) (29
April 2022)**



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Butler-Sloss v Charity Commission

- The parties
- The facts
- Declaratory relief



The judgment – 10 legal principles that apply when investing

- (1) Trustees' powers of investment derive from the trust deeds or governing instruments (if any) and the Trustee Act 2000.
- (2) Charity trustees' primary and overarching duty is to further the purposes of the trust.
- (3) That is normally achieved by maximising the financial returns on the investments that are made.



The judgment (continued)

- 4) Social investments or impact or programme-related investments are made using separate powers than the pure power of investment.
- 5) Where specific investments are prohibited from being made by the trustees under the trust deed or governing instrument, they cannot be made.
- 6) Where trustees are of the reasonable view that particular investments or classes of investments potentially conflict with the charitable purposes, the trustees have a discretion as to whether to exclude such investments.



The judgment (continued)

- 7) Trustees can take into account the risk of losing support from donors and damage to the reputation of the charity generally and in particular among its beneficiaries.
- 8) Trustees need to be careful with regards to making decisions on investments on purely moral grounds.
- 9) Trustees are required to act honestly, reasonably and responsibly.



The judgment

- 10) If that balancing exercise is properly done and a reasonable and proportionate investment policy is thereby adopted, the trustees have complied with their legal duties in such respect and cannot be criticised, even if the court or other trustees might have come to a different conclusion.



Issues for charities

- Fundamentals are unchanged
- Good decision-making is critical
 - CC3 The essential trustee
 - CC27 It's your decision
- Commission guidance development to continue



Any Questions?

