



TWENTY NINTH ANNUAL CONFERENCE

Thursday, 12 October 2023

held at

**Kings Place
90 York Way
London N1 9AG**

#CLACConf2023

Sponsored by

evelyn
PARTNERS

Charity Law Association Twenty Ninth Annual Conference

Thursday, 12 October 2023

AGENDA

09.20 – 10.15	Registration, refreshments and networking	
Morning Session opens		
10.15–10.20	Welcome and Introduction	Welcome from Elizabeth Jones of Farrer & Co , Chair of the Charity Law Association, and introductions from the Conference co-chairs, Joshua Winfield of Radcliffe Chambers and Liz Brownsell of Birketts LLP
10.20–10.30	Tribute to Sylvie Nunn	Jo Coleman of Womble Bond Dickinson and Nicola Evans of BDB Pitmans
10.30–11.00	Keynote speech	Orlando Fraser KC, Chair of the Charity Commission
11.00–11.30	Northern Irish Law update	Frances McCandless, Chief Executive of the Charity Commission for Northern Ireland
11.30–12.00	Coffee and networking	
Morning Session Two		
12.00–12.30	Recent history of challenges to charitable status	Ted Loveday of Maitland Chambers
12.30–13.15	Panel discussion on charities and Artificial Intelligence	Chaired by Ruo Wu of Winckworth Sherwood in conversation with Ian McLintock of the Charity Excellence Framework , Dr Carlton Chu of Google Deep Mind and Dr Janis Wong of the Law Society
13.15–14.15	LUNCH	
Afternoon session opens		
14.15–14.20	Welcome back from Conference co-chairs	
14.20–14.50	Deep dive into cy-près: past, present - and future?	Matthew Mills of Radcliffe Chambers
14.50–15.35	Legal Update	Pippa Garland of Russell Cooke
15.35–16.30	Panel discussion on legal and operational issues thrown up by “culture wars”	Chaired by Samara Lawrence, Deputy GC at Oxfam in conversation with Halima Begum of ActionAid UK , Rhodri Davies of Why Philanthropy Matters , Rosamund McCarthy Etherington of Stone King LLP , and Kate Miller of DRD Partnership
16.30–16.35	Closing remarks from the CLA Chair and Conference co-chairs	
16.35–17.30	Tea, cake and networking	

LUNCH MENU

Roast corn-fed chicken, tabbouleh, charred butternut salsa, mint yoghurt (hot, GF)

Zhoug roasted sweet potato, spinach, kerala spiced tomato sauce, lemon and thyme roasted new potatoes (hot, VE, GF)

Thai green vegetable curry, coconut rice, crispy shallots (hot, VE)

Desserts

Eton Mess with cherry (VE, GF)

Vegan chocolate cheesecake pot (VE)

The Chairs of the Conference

Joshua Winfield and Liz Brownsell

This year's conference is co-hosted by Joshua Winfield and Liz Brownsell both of whom are on the Executive Committee of the Charity Law Association. Joshua is a Barrister at Radcliffe Chambers and Liz is a partner and head of the charities team at Birketts LLP.

The Speakers

Halima Begum, ActionAid UK

Dr Halima Begum is CEO of the humanitarian INGO ActionAid UK, and previously CEO of the Runnymede Trust, a leading UK civil rights and equalities think tank. A disabled British-Bangladeshi Muslim woman, Halima began her career as a policy analyst on Lord Parkeh's commission on a multi-ethnic Britain in 1999, before moving on to work in senior roles with the UK Government, the British Council and LEGO Foundation. In that time, Halima has led development policy and programmes in areas including food security, the environment, public health, human rights and post-conflict reconstruction in a variety of countries including China, Indonesia, Nepal and Pakistan. A national thought leader on issues of race and social equity, she is a board member of Liberty, DEMOS and the NHS Race and Health Observatory, and an advisor to such bodies as the British Academy, ITV, the Nuffield Foundation and Scottish Government.

Dr Carlton Chu, Google Deep Mind

I specialise in algorithm prototyping on real-world problems. In the past few years, I have worked on various recommendation systems in Google. I worked on an internal recommendation system that suggested potential Ads customers to be assisted for improvements. I worked on Google Play store to recommend Apps that increase user engagement. I also worked with Google search to recommend zero prefix search terms. I currently work on the recommendation system for Google Cloud and YouTube music.

Previously, my training was in computer engineering and biomedical engineering. During my PhD and Postdoc, I applied machine learning algorithm to analyze brain MRI data. e.g. making predictions of neurological or mental diseases. I also applied the same technique to predict mental states from fMRI data, and won the Pittsburgh brain activity interpretation competition 2007. The objective of the competition was to predict the mental states and intention of the players in a 3D game with their fMRI signals.

Jo Coleman, Womble Bond Dickinson LLP

Jo is a Partner in the Charities Team at Womble Bond Dickinson (UK) LLP in London. Jo has been a charity lawyer for over 25 years advising a broad range of charities and not for profits on a wide range of issues. She joined the CLA Executive Committee in June 2013 and served for nine years, and as Chair from 2019 to 2022. Some of Jo's most exciting charity law related experiences have been through her work with the CLA, including giving evidence to the House of Lords Select Committee on the Charities (Protection and Social Investment) Bill as well as chairing numerous lively CLA working parties. Jo's term of office ran alongside Sylvie Nunn's term of office on the CLA Executive, and Jo and Sylvie became firm friends. She is really honoured to have been asked to speak about Sylvie at today's conference.

Rhodri Davies, Why Philanthropy Matters

Rhodri Davies is a well-known expert and commentator on philanthropy and civil society issues. He is the founder and Director of the think tank Why Philanthropy Matters and the host of the Philanthropisms podcast. He is also a Pears Research Fellow in the Centre for Philanthropy at the University of Kent, and Philanthropy Expert in Residence at the Pears Foundation.

Rhodri is the author of two books: What is Philanthropy For? (2023) and Public Good by Private Means: how philanthropy shapes Britain (2016). He was formerly Head of Policy at Charities Aid Foundation (CAF), where he also set up the in-house think tank "Giving Thought".

Nicola Evans, Charities Counsel, BDB Pitmans LLP

Nicola Evans is the charities knowhow lawyer for the charities and not-for-profit group at BDB Pitmans. She has extensive knowledge and experience across the charities field, which she brings to bear both within the firm and in working parties and sector bodies, such as the CLA and the Charity Tax Group. Nicola has previously served on the CLA Executive Committee, including as Chair between 2016 and 2019. Nicola is a regular speaker, blogger and commentator on charity law developments.

Orlando Fraser KC, Chair of the Charity Commission

Orlando Fraser has been a commercial barrister for nearly 30 years, practising at 4 Stone Buildings. He was appointed Queen's Counsel in 2014 (King's Counsel in 2022). Previously he served on the board of the Charity Commission from 2013 to 2017, where he acted as one of two statutory legal members and chaired the Governance & Remuneration Committee as well as the Policy & Guidance Committee. Orlando has also served on the Civil Justice Council and the National Council for Voluntary Organisations' Advisory Council.

Orlando's involvement in the voluntary sector stretches back to 1992, when he took an aid convoy to Bosnia to help its Muslim population. Since then he has served on the Management Committee of a West London refuge for women victims of domestic abuse, served as a Governor of Ilfracombe College, edited the voluntary sector sections of Centre of Social Justice's "Breakdown Britain" and "Breakthrough Britain" reports, and supported the Rugby Portobello Trust charity through the 2017 Grenfell tragedy. Apart from the Rugby Portobello Trust, Orlando supports a number of other charities.

Pippa Garland, Russell-Cook LLP

Pippa is a partner at Russell-Cooke, where she advises charities, social enterprises and other not-for-profit organisations on all aspects of charity law. Pippa combines a general practice advising on governance, fundraising and trading, mergers and grant making, with a particular expertise in philanthropy, where she advises both individuals and businesses on their giving. Pippa is also a trustee of FoodCycle and a public affairs committee member of Philanthropy Impact.

Samara Lawrence, Oxfam

Samara Lawrence (she/her) is Deputy General Counsel at Oxfam. Samara supports the organisation globally on its legal, campaigning and regulatory matters. Prior to joining Oxfam in March, Samara was an associate in the Charity and Social Enterprise team at Bates Wells.

Samara is also the co-founder of Sistren Legal Collective, a legal collective working at the intersection of law, grassroots organising and movement building. She is passionate about social justice and using the law as a tool to support the work of leaders, activists, changemakers and organisations centring social and racial justice.

Ted Loveday, Maitland Chambers

Ted is a barrister at Maitland Chambers who specialises in charity law, governance, litigation and commercial disputes. He enjoys taking on impactful, novel cases which help to advance campaigns or make a difference for clients in the nonprofit sector. His recent court appearances include Mermaids' challenge to LGB Alliance's charitable status, the dispute over the split in the UK Tablighi Jamaat movement, and the appeal against the *cy-près* scheme in respect of Ealing's Victoria Hall.

Frances McCandless, Charity Commission for Northern Ireland

Frances was appointed to the Charity Commission for Northern Ireland in April 2010 as its first Chief Executive. Prior to taking up this post, Frances had a career in the voluntary and community sector going back over 30 years.

Frances has a BA (Hons) from University College, Oxford, an MPhil from Trinity College, Dublin and a Diploma in Public Administration from Warwick Business School, where she has also taught and been an Associate Fellow of the Institute of Governance and Public Management.

Rosamund McCarthy Etherington, Stone King LLP

Rosamund McCarthy Etherington is Co-Head of the Charity Sector at Stone King LLP. The focus of Rosamund's work is governance and regulatory for a wide range of organisations including advising charities in crisis and under investigation. Rosamund also advises charities and political bodies on campaigning and non-party campaigning electoral law. Rosamund was the founder and first chair of Poet in the City and has also been a Trustee or Director of a variety of other organisations, including the Small Charities Coalition, Free Word, the Friend Publications, Citizens UK and the Samuel Johnson Non-Fiction Prize Limited. She is co-founder of the Electoral Law Forum and was Chair of the Bates Wells Foundation that hosts the Stephen Lloyd Awards.

Ian McLintock, Charity Excellence Framework

A passionate volunteer for 40+ years, Ian has held various chair and CEO roles over the last 25. In December 2022 he launched the first Charity Excellence AI service, followed by several more, plus AI guides, toolkits and training, as part of the charity's Steppingstones Strategy to support the sector in adopting AI. With 40,000 members, growing at a rate of 2000 a month, Charity Excellence is the largest and fastest growing UK charity community. For those who value them, he holds a master's degree in corporate management and various other professional qualifications.

Matthew Mills, Radcliffe Chambers

Matthew Mills is a barrister at Radcliffe Chambers. He is one of just eight junior barristers who are ranked in both Chambers and Partners and Legal 500 for charity law. Matthew regularly advises charities across the country, from large international organisations to local trusts and start-ups, on governance and litigation. In addition to his advisory work, Matthew is currently representing charity clients in proceedings relating to disputed elections, the control of religious buildings, and substantial disrepair to leasehold property.

Matthew's practice also covers private client, property, insolvency, and commercial work. These areas often overlap with his charity law work. For example, he has advised and represented charities in landlord and tenant disputes (as both a landlord and a tenant), insolvency proceedings, and inheritance disputes.

Kate Miller, DRD Partnership

Kate Miller is a partner DRD Partnership, a strategic communications firm which promotes and protects clients' reputations at moments of challenge and change. A lawyer by training, Kate has over 20 years' experience advising corporates, institutions, charities and individuals on a broad range of critical communications issues. Her areas of focus include reputation and crisis management, litigation communications, media and stakeholder relations, safeguarding and cyber.

Kate started her career as a litigator at law firm Allen & Overy in London, qualifying in 1997. In 2000 she moved into communications, spending the first 12 years at Brunswick specialising in financial communication before moving to focus on reputation management in 2012.

Dr Janis Wong, The Law Society

Dr Janis Wong is a Data and Technology Law Policy Advisor at the Law Society. She leads on the regulatory, digital, and policy developments across data, cybersecurity, artificial intelligence, and technology to support the legal profession and access to justice. Janis' background is across Law and Computer Science, where she has research, law, and policy expertise analysing the socio-technical and regulatory landscape related to the digital environment across both private and public sectors. She holds a PhD in Computer Science on data protection and data governance, which was awarded best data protection thesis by the Council of Europe. Prior to joining the Law Society, Janis was a Postdoctoral Research Associate at The Alan Turing Institute, the UK's national institute for artificial intelligence and data science, and a Research Fellow at the Open Data Institute.

Ruo Wu, Winckworth Sherwood LLP

Ruo is a Senior Associate (Charities and Social Enterprises) at Winckworth Sherwood LLP. As a changemaker, she is passionate about helping and facilitating charities and social enterprises to make their mark. She currently runs the "Charity Law Conversation Series" (<https://wslaw.co.uk/our-people/ruo-wu/>) where she has informal and informative discussions with various representatives of the third sector, as well as with experts to explore current developments in this sector. Ruo also has significant podcast recording experience and have released 25 podcast episodes, featuring interviews with chief executives, trustees and representatives of charities and social enterprises both in the UK and abroad, exploring current trends and topical issues in philanthropy and civil society.

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Tribute to Sylvie Nunn

Jo Coleman of Womble Bond Dickinson and
Nicola Evans of BDB Pitmans



The Sylvie Nunn Trust has been set up in Sylvie's memory to support causes about which she cared deeply, including funding the provision of musical instruments for children, education and support for mental health wellbeing, and the advancement of peace and reconciliation between peoples and cultures. The Sylvie Nunn Trust is a restricted fund operating under the auspices of Prism the Gift Fund, Registered Charity Number 1099682.

If you wish to make a donation, you can do so here:



<https://www.justgiving.com/sylvienunn-memfund>

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Keynote speech

Orlando Fraser KC, Chair of the Charity Commission

TWENTY NINTH ANNUAL CONFERENCE

Northern Irish Update

**Frances McCandless, Chief Executive of the Charity
Commission for Northern Ireland**

Frances McCandless
Chief Executive
Charity Commission for Northern Ireland



1

Agenda

Court of Appeal judgment (Feb 2020)

Charities Act (Northern Ireland) 2022

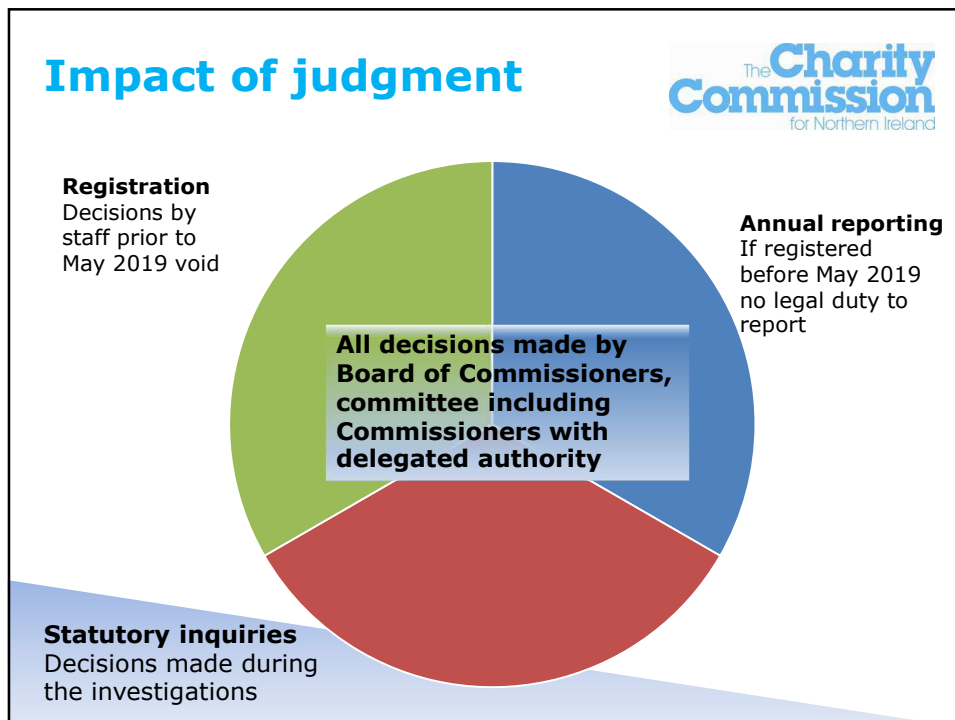
Independent Review of charity regulation in
Northern Ireland – published 20 January 2022

Updates

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The Charities Act (Northern Ireland) 2022



Register of charities – reinstated.

Annual reporting – restored.

Refreshed Appeal rights – deadline has passed.

**Potential for Scheme of Delegation - allow for
staff decision making.**

**Power for Minister/Department to introduce
registration threshold.**

5

The Charities Act (Northern Ireland) 2022



**Decisions not included within the retrospective effect of the
new Act:**

Court or tribunal proceedings before 30 March 2022.

**Where, on the date of Royal Assent, proceedings are
pending.**

**Does not make lawful certain decisions taken during a
statutory inquiry: suspension or removal of trustees, or the
publication of a Statutory Inquiry report.**

6

The Review made 93 recommendations

Registration of charities

An **enabling** regulator

Proportionate regulation

An **effective** public body

7

Registration

Clear the list of those waiting to register
Registration threshold (DfC)

Enabling

New Engagement strategy
Website development
How guidance is pitched and communicated
Engagement and support

8

Proportionate

Risk Assessment Framework - RAF
Investigation of concerns (informed by RAF)
Traffic light display (early December)
Internal review

Effective

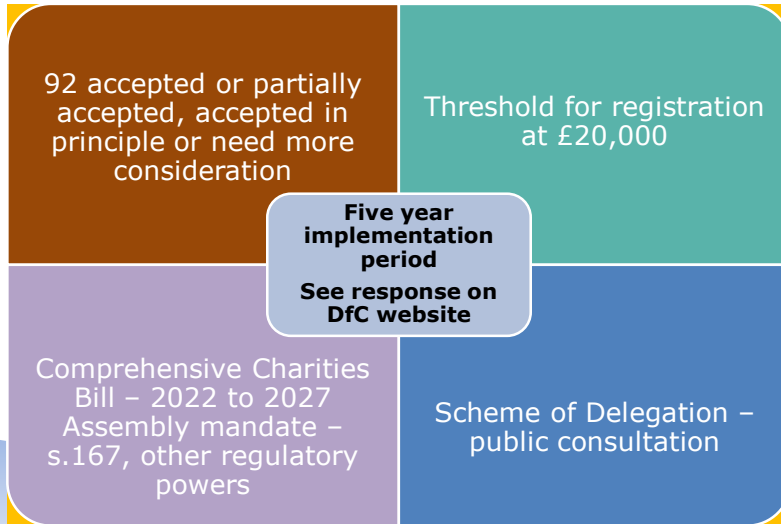
Scheme of delegation (DfC)
Section 54(2)
Stakeholder forum
Section 167s and CIOs – for future

9

Review of charity regulation on s.167s

- **Chapter 5, section 6 - registration**
- **Chapter 10, section 3 - some technical issues**
- **Recommendations: 34-37 and 86-89.**
- **The new 2022 Act does not deal with section 167 of the Charities Act (Northern Ireland) 2008, which has not yet been commenced.**

10



11

Acting on review recommendations



Planning



Testing



Implementation and communications



Measuring impact

12

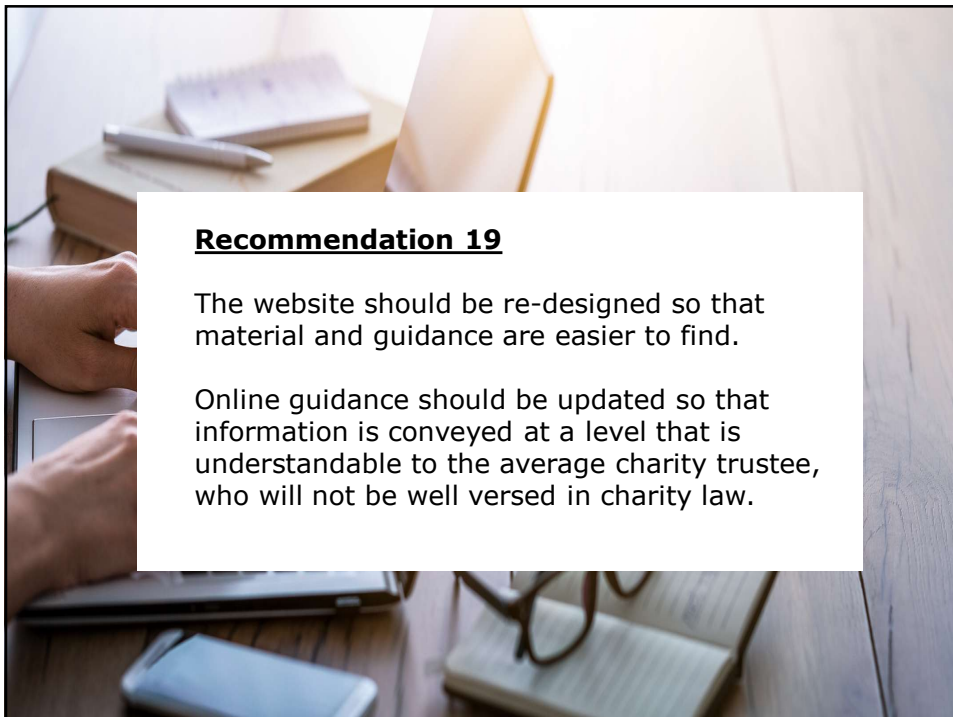


Recently registered – this will display on all registered charities entries, regardless of when they registered, up until their first annual reporting deadline date has been reached (10 months after their first full year of accounting period) or the charity submits their first annual return online.

- **Received: on time** – displays on a charity's entry when they have filed their annual reporting information on time.
- **Received: x days late** – displays on a charity's entry when the charity's annual return has been filed after their deadline date, including the number of days overdue.
- **Overdue: x days** – displays on a charity's entry for the x number of days after their 10-month deadline. The text will be amber if the charity is in default for 2 weeks or less.
- **Overdue: x days** – displays, in red text, on a charity's entry when the charity's annual return are outstanding for more than two weeks.

Removed – displays on a charity's entry when they have been removed from the register. This is usually because the charity has closed or merged with another charity.

13

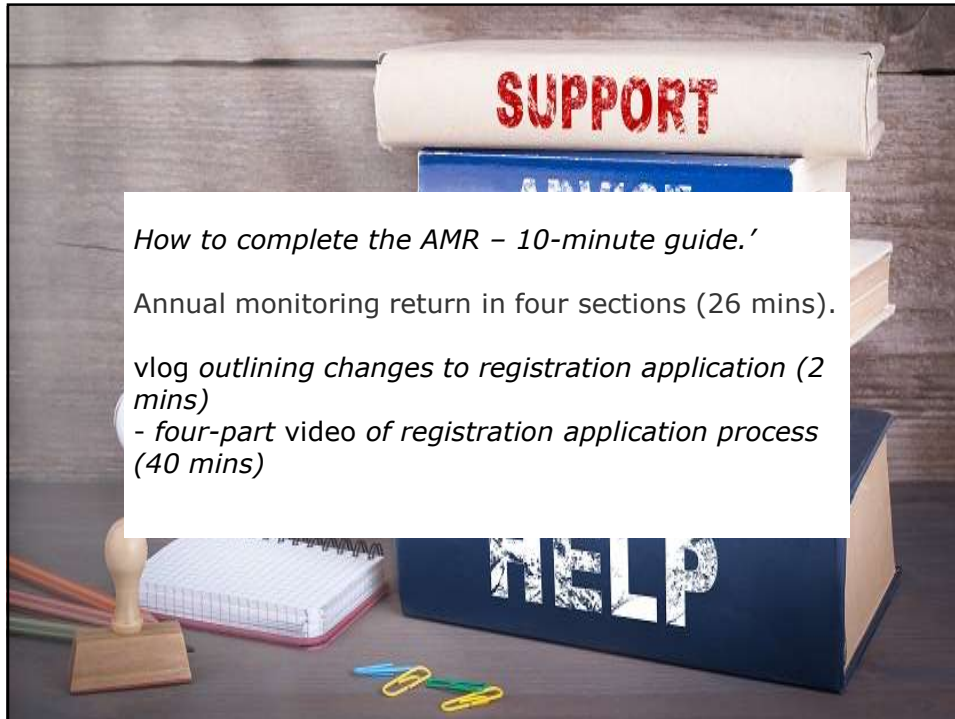


Recommendation 19

The website should be re-designed so that material and guidance are easier to find.

Online guidance should be updated so that information is conveyed at a level that is understandable to the average charity trustee, who will not be well versed in charity law.

14



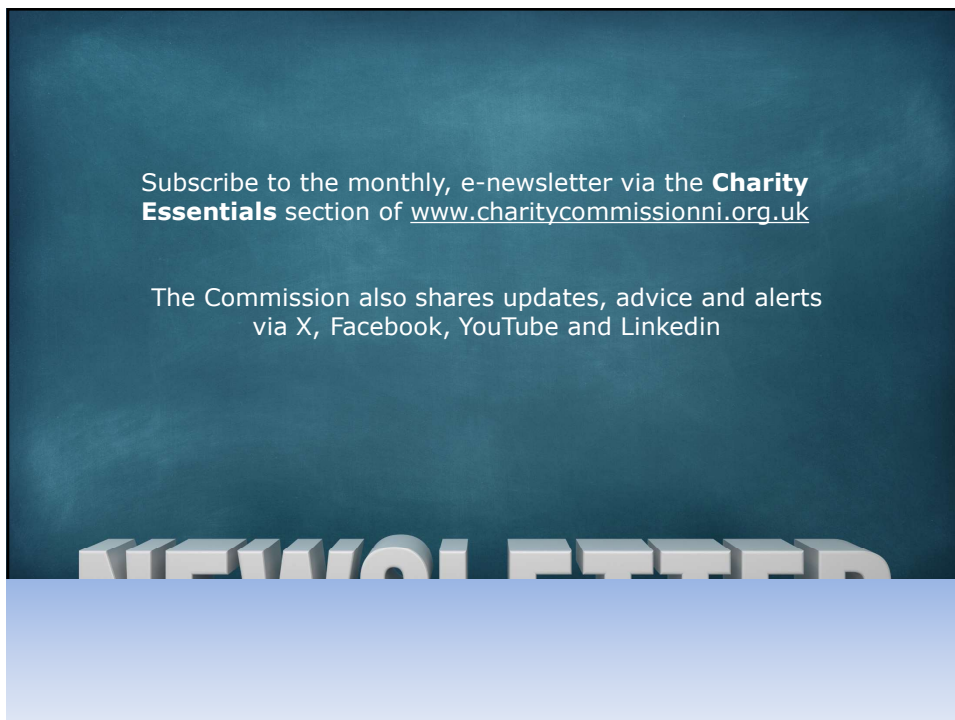
How to complete the AMR – 10-minute guide.'

Annual monitoring return in four sections (26 mins).

vlog outlining changes to registration application (2 mins)

- four-part video of registration application process (40 mins)

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Subscribe to the monthly, e-newsletter via the **Charity Essentials** section of www.charitycommissionni.org.uk

The Commission also shares updates, advice and alerts via X, Facebook, YouTube and LinkedIn

NEWSLETTER

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Recent history of challenges to charitable status

Ted Loveday of Maitland Chambers

TWENTY NINTH ANNUAL CONFERENCE

Panel discussion on charities and Artificial Intelligence

**Chaired by Ruo Wu of Winckworth Sherwood in
conversation with Ian McLintock of the Charity Excellence
Framework, Dr Carlton Chu of Google Deep Mind and
Dr Janis Wong of the Law Society**

Panel discussion on charities and Artificial Intelligence

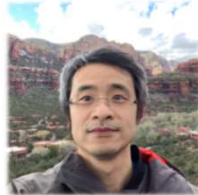
**Winckworth
Sherwood**

Chaired by Ruo Wu, Winckworth Sherwood LLP Thursday 12th October 2023



Dr Janis Wong

*Technology Policy
Advisor, The Law
Society*



Dr Carlton Chu

*Senior Research
Engineer, Google
DeepMind*



Ruo Wu

*Senior Associate,
Charities and Social
Enterprises,
Winckworth Sherwood
LLP*



Ian McIntock

*Founder of Charity
Excellence Framework*

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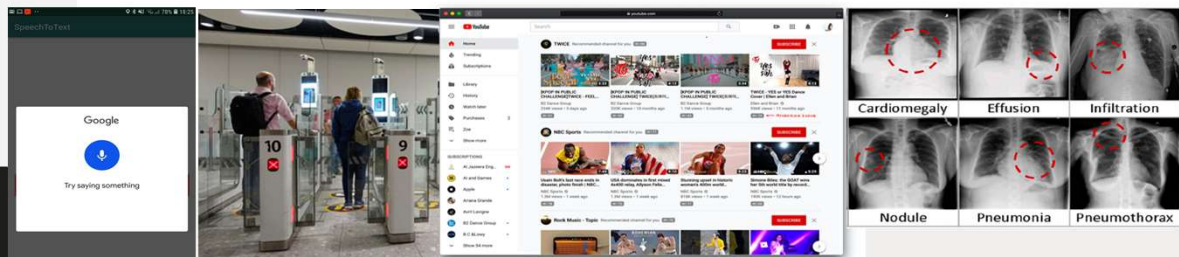
Dr Carlton Chu

**Introduction Discriminative AI and Generative AI:
One pro bono project**

2

Discriminative AI

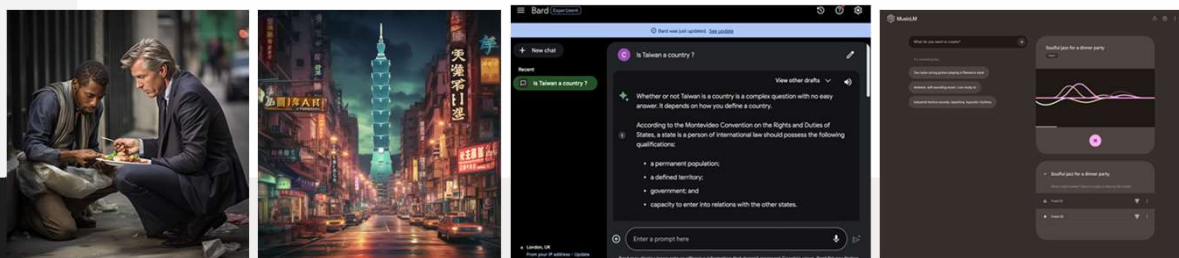
- A discriminative model learns the mapping from features in the data to discrete labels (classification) or continuous targets (regression).
- Examples: Voice recognition (speech to text), face recognition, video recommendation, disease diagnosis...



3

(Conditional) Generative AI

- A generative model learns the patterns or distributions of the training data and then generate new data that has similar characteristics. It can be conditioned on text prompts and images to generate subset of the data that is consistent with the input prompt.
- Examples: Images (Midjourney, Imagen...), Text (ChatGPT, Bard...), Music (musicLM)



4

WS



The banner features a collage of photos showing diverse groups of people interacting. In the center, there is a circular graphic with colorful arrows pointing outwards. The text 'UpTogether' is prominently displayed in a large, white, sans-serif font. Below the name, the tagline 'REAL FAMILIES. COLLECTIVE POWER.' is written in a smaller font. At the bottom of the banner, there are two buttons: 'Download on the App Store' and 'Get it on Google play'.

Connections
This is your place to find, connect and share with other hard working families.

Groups
Connect with groups that share your interests, goals and ideas.

Conversation
Join the conversation and share your experiences to inspire others and be inspired.



A map of the United States with several red location pins placed across various states, including California, Texas, Florida, and the Northeast.

Matching your initiatives to get ahead

A new way of investing in you and your community.
Get access to:

- ✓ Scholarships
- ✓ Matched Savings
- ✓ Endorsements
- ✓ Awards
- ✓ Loans
- ✓ And More...



An icon consisting of a central circle surrounded by four smaller icons: a graduation cap, a house, a heart, and a group of people.

5

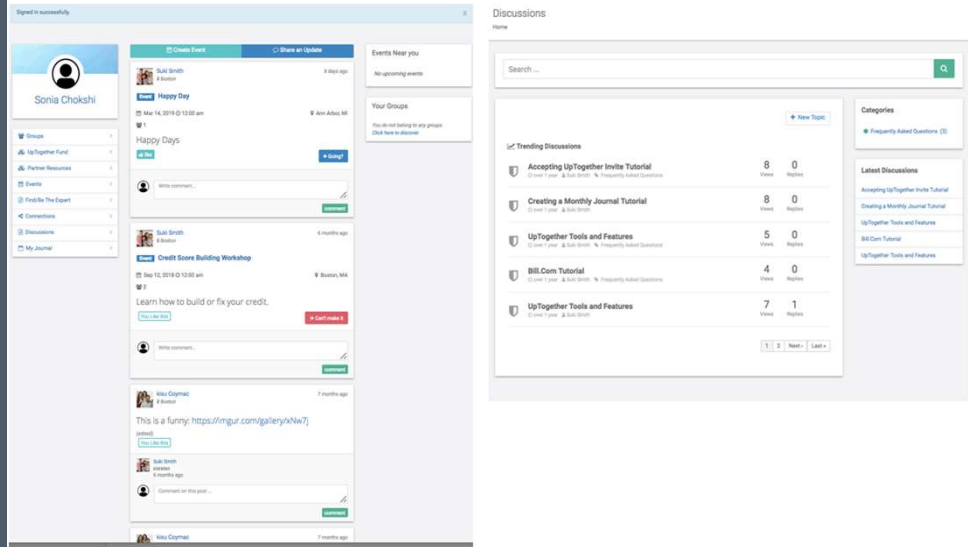
WS

Help UpTogether with AI Technology

- A machine learning model that classifies unstructured text into topics based on interactions within UpTogether.
- Create text labels that might be relevant. (e.g. Auto generating hashtags)
- Recommend relevant posts to the users based on their personal preference and user history.
- Use the interaction signals to identify trending posts.

6

WS



7

WS

Ian McLintock

Charity Excellence Framework

8

WS



9

WS

Charity Excellence AI Resource Pack



OUR AI STEPPINGSTONES STRATEGY

AI is the sector's biggest opportunity in decades and its impact will be so fundamental, we can't afford to get this wrong.

Our aim is to act as a catalyst to enable all charities to exploit this, not least the small and marginalised groups who are too often left behind. Not this time!

We will support everyone, but particularly the 100s of small infrastructure bodies who do brilliant work in supporting small, frontline charities but who often struggle to access funding.

AI SERVICES

BOTH AI BUNNIES

- Enabling any non-profit to find funding, help, resources and data it needs.
- Ask Me Anything - answering almost any question about running your charity.
- Charity facts and popular questions, for the public and media.

WEBSITE BUNNY ONLY

- Connecting individuals and families to welfare and financial support.

IN-SYSTEM BUNNY ONLY (YOU MUST REGISTER AND LOGIN - IT'S FREE)

- Grant Application Bid Writer - it doesn't matter if you've no fundraising experience and/or struggle with written English.
- Chat To Charity ChatGPT - for those who really don't do tech. Chat to the in-system tech bunny and it'll do everything for you.
- Policy Downloads. When you ask the in-system AI bunny a question, it'll give you 2 options - Downloads and Ask Me Anything. Downloads are only for policies.

For any AI services, click the AI bunny icon and ask it short questions, including key words. For the in-system bunny, you need to login first and ask it questions, or click the Funding Bid or Create ChatGPT buttons.

QUICK, SIMPLE
AND VERY EFFECTIVE.
NEARLY HALF OUR
RATINGS ARE 10/10.

Find Funding, Free Help & Resources
- Everything Is Free.

REGISTER
NOW!

Charity Excellence

A free, one-stop-shop for anything a non-profit needs

10

AI INSIGHT BRIEFINGS

THE CHARITY SECTOR
 What are AI and ChatGPT, the problems and impact, including what the future may look like very soon.

<p>FUNDRAISING The impact on fundraising, including how fundraising jobs and the sector will change, how to exploit the innovation offered, and who the winners and losers might be.</p>	<p>CHARITY SECTOR JOBS The impact, which will go, what changes we might expect, new roles that will be created and what charities need to think about and do.</p>
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TOOLKITS & GUIDES
 Tools that work for anyone and every charity

<p>MANAGING AI</p> <ol style="list-style-type: none"> 1 Charity AI - Ethics & Governance Framework 2 Charity AI - Risk Assessment & Register 3 Charity AI - Design Principles Toolkit 4 AI Toolkit - Is It A Threat Or Opportunity For My Charity? 5 AI Buzz Words! Confused - just ask an AI bunny. <p>CHATGPT FOR CHARITIES</p> <p>Level 1 - Way of AI? Register, then login and the AI bunny will do it for you.</p> <p>Level 2 - Charity ChatGPT - Getting Started</p> <p>Level 3 - Charity ChatGPT - Prompts Library</p> <p>Level 4 - Charity ChatGPT - Write Your Own Prompts</p>	<p>AI TRAINING</p> <ul style="list-style-type: none"> • Introduction to AI - what it is, the key risks, how to manage these and exploit the opportunities, and what AI can and cannot do. • Using ChatGPT - what it is, what it can and cannot do, and how to begin using it immediately. <p>Both are practical and neither requires any AI knowledge.</p>
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Ian McIntock Founder • 07595 371 444
 iam@charityexcellence.co.uk • www.charityexcellence.co.uk

Panel discussion on charities and Artificial Intelligence



Chaired by Ruo Wu, Winckworth Sherwood LLP Thursday 12th October 2023



Dr Janis Wong
 Technology Policy Advisor, The Law Society



Dr Carlton Chu
 Senior Research Engineer, Google DeepMind



Ruo Wu
 Senior Associate, Charities and Social Enterprises, Winckworth Sherwood LLP



Ian McIntock
 Founder of Charity Excellence Framework

THANK YOU

TWENTY NINTH ANNUAL CONFERENCE

Deep dive into cy-près: past, present - and future?

Matthew Mills of Radcliffe Chambers

Deep dive into cy-près: past, present—and future?

Matthew Mills

12th October 2023



1

The past



This Photo by Unknown Author is licensed under [CC BY-SA](#)

"it was unfair that the sum which the deceased had intended for the spectacle should fall to the profit of the heirs. Therefore, the heirs and the chief men of the town should be summoned to discuss how the [legacy] could be transformed so that the testator's memory would be celebrated in some other legal way"

-- Modestinus' *Replies* Book IX
(c.240 AD)

2

Cy-près: introduction

- The law was amended on 31st October 2022 by sections 6, 7 and 8 Charities Act 2022
- If a cy-près occasion occurs, trustees are under a **duty** to secure the effective use of assets: s.61 Charities Act 2011
- 2 broad situations in which cy-près may be appropriate:
 1. A charitable gift 'initially fails'; **or**
 2. Certain subsequent events frustrate the current purposes

3

'initial failure'

You need to show 2 things:

1. The gift has 'initially failed'; **and**
2. The donor had a 'general' or 'paramount' charitable intention

4

'initial failure'

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Chambers

- A gift 'initially fails' if there is no reasonable prospect of the object being carried into effect, even in the future
 1. Make this assessment at the time the gift is made
- Examples of initial failure:
 1. Money is donated to a specific, illegal purpose
 2. A gift to an institution which never existed (but not an institution which only later ceases to exist)
 3. Money is donated to build something, but no suitable site can be found

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5

'general charitable intention'

Radcliffe
Chambers

- Are the words which cause the gift to fail merely the machinery for achieving the gift or the substance of the gift itself?
- You do **not** need an intention to benefit *any* type of charity; just an intention wider than the wording of the gift
 1. E.g. an intention to benefit educational charities, rather than one specific school which never existed
- To decide this, look at:
 1. The entire document (e.g. will or gift)
 2. The nature of the proposed charity
 3. What is involved in the donor's plan or project
 4. Whether the donor did or did not make other charitable gifts at the same time is not decisive

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'general charitable intention'

Radcliffe
Chambers

- s.63A Charities Act 2011 (as amended): a donor is deemed to have made the gift for "*charitable purposes generally*" if:
 1. The Commission makes an order that it would be unreasonable for (a) the charity to incur the expense of trying to return the gift **or** (b) the donor to expect the gift to be returned;
 2. The gift was for £120 or less, the trustees reasonably believe the donor gave £120 or less to the charity that year, **and** the gift was not conditional;
 3. The donor cannot be located; or
 4. The property is (a) cash which was collected in a way which does not distinguish individual donations (e.g. collection boxes) **or** (b) prize winnings

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7

Cy-près: subsequent events

Radcliffe
Chambers

To obtain this type of cy-près scheme, you must show:

1. One of the 'cy-près occasions' in s62(1) Charities Act 2011 has occurred; **and**
2. The original gift was not limited (i.e. was unconditional).
 - a) You do not need to show general charitable intention

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Cy-près occasions: s.62 ChA 2011

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1. The charity's purposes have been fulfilled as far as possible in whole or in part
 - a) E.g. a gift to pay off a charity's debt which has already been cleared: Corbyn v French (1799) 4 Ves Jr 418
2. The charity's purposes cannot be carried out at all or in accordance with (a) the donor's directions and (b) the spirit of the gift
 - a) 'Spirit of the gift' is the basic intention underlying the gift (ie substance, not form): Varsani v Jesani [1999] Ch 219
 - b) Infer from the terms of the gift, the charity's records, and how the charity operated over time: OG2, section A1.1.1
 - c) E.g. a gift to pay a preacher a stipend of £3 a year: Re Lepton's Charity [1972] Ch 276

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Cy-près occasions: s.62 ChA 2011

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3. Charity's purposes only provide for a use of part of the money
 - a) E.g. surplus funds raised from a fundraising appeal
4. Charity's property can be used more effectively in conjunction with the property of another charity with similar purposes
 - a) E.g. consolidating two charities
 - b) To decide this, you must consider "*the appropriate considerations*": (i) the spirit of the gift; **and** (ii) the current social and economic circumstances
 - c) The 'spirit of the gift' is discussed above
 - d) Take a broad view of economic and social circumstances (e.g. environmental, legal, scientific or technological factors): Aliss v Charity Commission CA/2011/0007

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Cy-près occasions: s.62 ChA 2011

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5. The charity's purposes were laid down with reference to an area which has ceased to be a unit for some purpose
 - a) E.g. local authority reorganisation
6. The boundaries of a local authority in which a local charity operates are expanded (see schedule 4 Charities Act 2011)
7. The charity's purposes were laid down by reference to a class of persons or an area which has ceased to be suitable
 - a) Consider "*the appropriate considerations*" (see above)
 - b) E.g. the number of potential beneficiaries in an area drops dramatically: *Peggs v Lamb* [1994] Ch 72
8. The charity's purposes have been adequately provided for by other means
 - a) E.g. local authority housing or state benefits introduced

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Cy-près occasions: s.62 ChA 2011

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9. The charity's purposes cease to be charitable as a matter of law, e.g. because they have become useless or harmful to the community
 - a) E.g. rifle or pistol clubs
10. The charity's purposes ceased in any other way to provide a suitable and effective method of using the charity's property
 - a) Means not suitable or effective *at all*, **not** just *less* suitable
 - b) But this is **not** a test of impossibility
 - c) 'Ceased' does **not** cover situations in which the purposes *never* provided a suitable and effective method
 - d) Consider "*the appropriate considerations*" (see above)
 - e) E.g. a religious schism develops between groups of members in a religious charity: *Varsani v Jesani* [1999] Ch 219

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Cy-près: the Commission's decision

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- s.67(1) Charities Act 2011 gives the Commission a discretion whether or not to make a scheme: it *may* do so
- The Commission will consider 3 specific things:
 1. The spirit of the original gift
 2. The desirability of securing that the property is used for purposes which as far as reasonably practicable close to the original purposes
 3. The need for the purposes to be suitable and effective in light of the current social and economic circumstances

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AG v Zedra [2022] EWHC 102 (Ch)

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The spirit of the gift:

1. Necessarily broader than the charity's purposes
2. In this case, only the reduction of the national debt
3. Encouraging altruism in others was not part of the spirit of the gift because that is not a valid charitable purpose
 - a) A contradiction between points 1 and 3?

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AG v Zedra [2022] EWHC 102 (Ch)

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- The desirability of securing that the property is applied for purposes which are close to the original purposes:
 1. Section 67(3)(b) assumes that closer *is* better
 - a) Too little latitude? Cf AG v Ironmongers' Company (1841) Cr & Ph 208, at 227
- Need for the charity to have suitable and effective purposes:
 1. 'Need' not 'desirability'
 2. But even a gift which creates "*close to nothing*" in benefits still has consequences
 - a) What about "*ongoing usefulness*"? cf OG, A1.1.1

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The future?

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"We should be flexible and imaginative in applying the cy-près doctrine, balancing usefulness and practicality with respect for the existing purposes and beneficiaries. The purpose of making a cy-près Scheme is to enable a charity to continue being effective, useful and relevant to its beneficiaries' needs in modern society, where without our intervention it would not be."

-- OG2, section A1.3.2

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Section 280A Charities Act 2011

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- To be introduced by section 3 Charities Act 2022
- A wide-ranging prospective power to amend any part of a charitable trust by resolution
- The new statutory power cannot be excluded
- The new statutory power is in addition to any existing powers
- The basic test: it is expedient in the interests of the charity

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Section 280A Charities Act 2011

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The caveats:

1. The organisation cannot cease to be a charity
2. If the charity has voting members, the trustees (51%) and members (75%) must approve
3. If the charity does not have members, 75% of the trustees must approve
4. Certain changes require the consent of the Commission before they are effective: s.280A(8)

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Section 280A Charities Act 2011

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The caveats:

5. When deciding whether to consent, the Commission will consider:
 - a) The charity's original purposes (if known)
 - b) The desirability of securing that the purposes are so far as reasonably practicable *similar to* the current purposes
 - c) The need to have purposes which are suitable and effective in the current social and economic circumstances
6. The Commission can give notice or require the charity to give notice

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A future for cy-près?

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Situations in which cy-près is still relevant:

1. A gift in a will to a charity which initially fails because no such organisation ever existed
2. Trustees want to remove a restriction on permanent endowment and transfer the asset simultaneously
3. The Commission imposes a scheme pursuant to sections 70(4) and 70(5) Charities Act 2011
4. The AG applies for a scheme for a charity pursuant to section 70(2)(c) Charities Act 2011

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The image features a photograph of a grand, vaulted hall with a high, ribbed ceiling and stone columns. The text 'Radcliffe Chambers' is overlaid in the top right corner. A dark purple diagonal shape covers the bottom left portion of the image, containing contact information.

Radcliffe
Chambers

Matthew Mills

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www.radcliffechambers.com

TWENTY NINTH ANNUAL CONFERENCE

Legal Update

Pippa Garland of Russell Cooke

Click to edit Master text styles

LEGAL UPDATE 2023
TEXT HERE

CLA CONFERENCE 12 OCTOBER 2023
PIPPA GARLAND

1

What we are going to cover

- Developments at the Charity Commission
- Case law update
- Statutory updates
- Tax update
- Scotland
- Other updates
- What is on the horizon?

2

State of the nation – charity sector

- 76% of charities list 'income' among their main concerns
- 51% of charities using reserves to cover current running costs
- Corporate giving down by 17%
- Volunteering levels down to 13% in 2022, from 16% in 2018
- Total funds given increased to £12.7bn in 2022, up from £10.7bn in 2021



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Developments at the Charity Commission

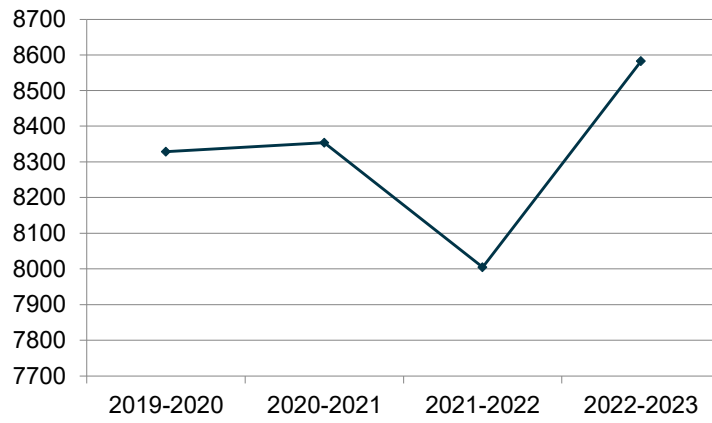
- Trends
- New and updated guidance
- Annual returns, accounts and operational guidance
- Personnel
- Inquiries and compliance casework



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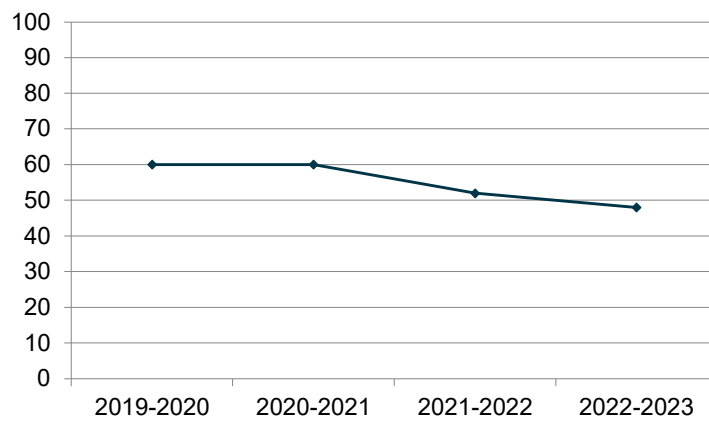
Number of charity applications



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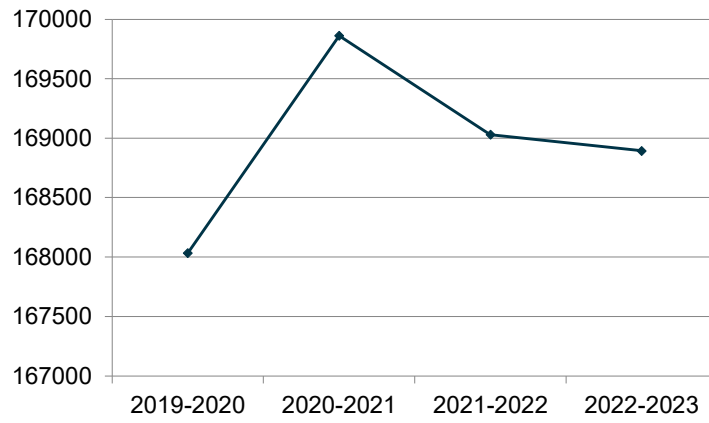
Percentage success rate



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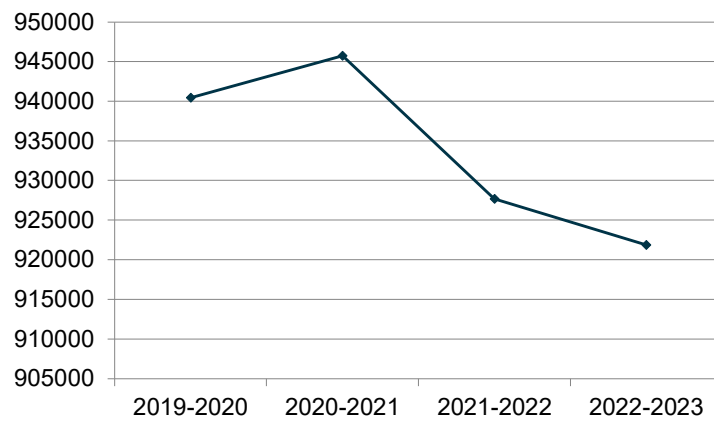
Number of charities on the register



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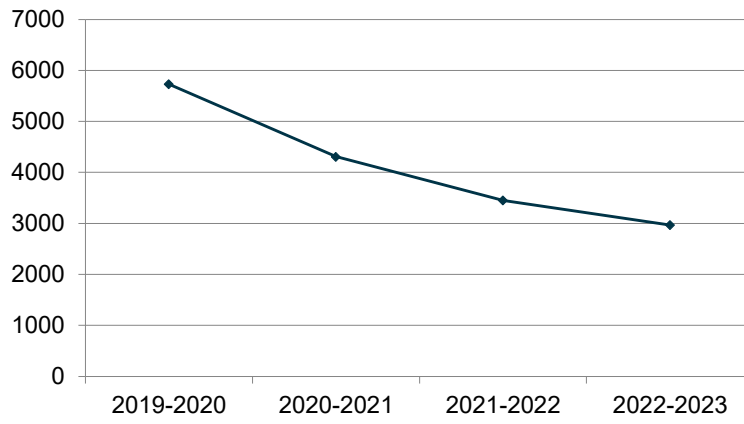
Number of charity trustees



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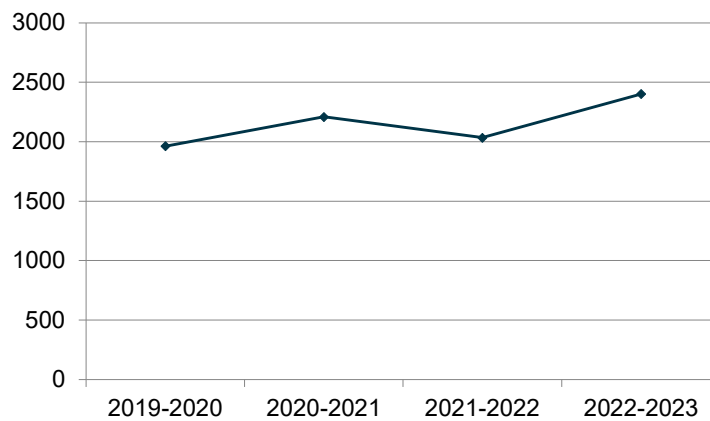
Serious incident reports



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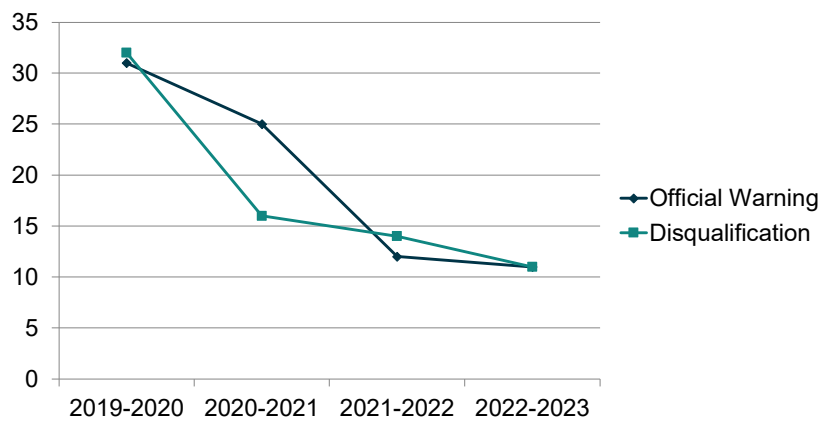
Use of Commission's compliance powers



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Official warnings / disqualifications



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New and updated guidance

- Charities and social media
 - Social media policy
 - No monitoring of personal accounts
 - Respect and tolerance
- Internal financial controls for charities (CC8)
- Investing charity money: guidance for trustees (CC14)
- Charities Act 2022 updates



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Miscellaneous developments

- Annual return
- My Charity Commission Account
- Operational guidance
- Personnel



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Inquiries and compliance casework

- The Cowesby Trust
- Care4Calais
- Hospice Aid UK
- Christ Church, Oxford
- Assyrian Church of the East Relief Organization (ACERO)
- The Gerald Curgenvin Will Trust
- The Jim Ratcliffe Foundation



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Case law update

- Haque and another v Faradhi and others
- Frank Wingett Cancer Relief Fund
- Mermaids v Charity Commission and another
- Attorney General v Zedra Fiduciary Services (UK) Ltd
- Trustees of Mountain of Fire and Miracles Ministries International v Charity Commission
- Wilson v Charity Commission
- Friends of Victoria Hall v Charity Commission



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Statutory updates

- Retained EU Law (Revocation and Reform) Act 2023
- Economic Crime (Transparency and Enforcement) Act 2022
- Elections Act 2022
- Dormant Assets Act 2022
- Subsidy Control Act 2022



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Tax updates

- London Borough of Merton Council v Nuffield Health
- Yorkshire Agricultural Society v HMRC
- Gift Aid on administration fees
- New charity tax newsletter



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Charities (Regulation and Administration) (Scotland) Act 2023

- Register of charity trustees
- Trustee disqualifications
- Register of charity mergers
- Positive directions
- “Connection to Scotland test”
- Commencement?



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Other updates

- Fundraising Regulator
- Data protection
- Corporate structures for good



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What is on the horizon?

- Economic Crime and Corporate Transparency Bill
- Data Protection and Digital Information (No. 2) Bill
- Procurement Bill
- Judicial review of Kids Company Charity Commission's inquiry report
- General election
- Review of financial thresholds




20

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Any questions?



Pippa Garland

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TWENTY NINTH ANNUAL CONFERENCE

Panel discussion on legal and operational issues thrown up by “culture wars”

Chaired by Samara Lawrence, Deputy GC at Oxfam in conversation with Halima Begum of ActionAid UK, Rhodri Davies of Why Philanthropy Matters, Rosamund McCarthy Etherington of Stone King LLP, and Kate Miller of DRD Partnership

EVELYN PARTNERS – Investment management for Charities

WHO ARE WE?

- Merger of Tilney and Smith & Williamson in September 2020
- Group rebrand to Evelyn Partners in 2022



1

integrated provider of wealth management, online investing and accountancy



186 YEARS

of helping clients achieve their financial goals



172k+

clients trust us with their financial future



£54.4bn

assets under management*



10+

Years Performance track record



No.5

Accountancy firm*



400+

tax and accountancy specialists



265+

Qualified financial planners



300+

Investment managers



27

local offices and >3,000 staff across the UK, Ireland and Jersey

*As at 30 June 2023

OUR CHARITY SERVICE

DIFFERENTIATED AND BESPOKE APPROACH

Total charity assets under management of £3.2bn* managed by a dedicated team of 35 charity specialists based across 9 offices in the UK and Ireland.



No relationship managers

Investment managers run both client service and the portfolio



Bespoke portfolios

Segregated accounts, not 'off the shelf' funds



Long term relationships

Low staff turnover underpins the quality of service. Charity team staff have an average of 21 years of experience



Unique service

Range of tax/accountancy/investment/ financial planning

EXAMPLE CHARITY SECTORS WE SUPPORT

Education
Philanthropic & Grant making
Religious
Health & Medical
Community

Housing & Relief of Poverty
Military
Animal & Environment
Conservation & Heritage
Arts & Culture

*at 30 June 2023

BREADTH OF CHARITY SERVICES



OUR CHARITY CLIENTS

Charities by AUM*






Less than £1 million
£1 to £5 million
£5 to £10 million
£10 to £20 million
£20 to £50 million
Greater than £50 million
Total

Clients

748
359
65
37
19
5
1231

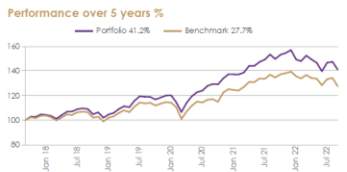
SERVICE LEVELS

PERSONAL SERVICE LED BY CHARITY SPECIALISTS

-  **Investment manager led:** decision makers lead the service
-  **Administration:** named administrators specialising in charities
-  **In-house back office:** transparent and direct, not outsourced
-  **Custody:** segregated nominees, ring fenced assets
-  **Reporting:** quarterly reports, online access, carbon/ESG reporting

Example Portfolio Performance Report

Portfolio	
Value as at 30 June 2022	GBP 30,013,597
Value as at 30 September 2022	GBP 30,244,717
Annual estimated gross yield	1.5%
Annual estimated gross income	GBP 453,644



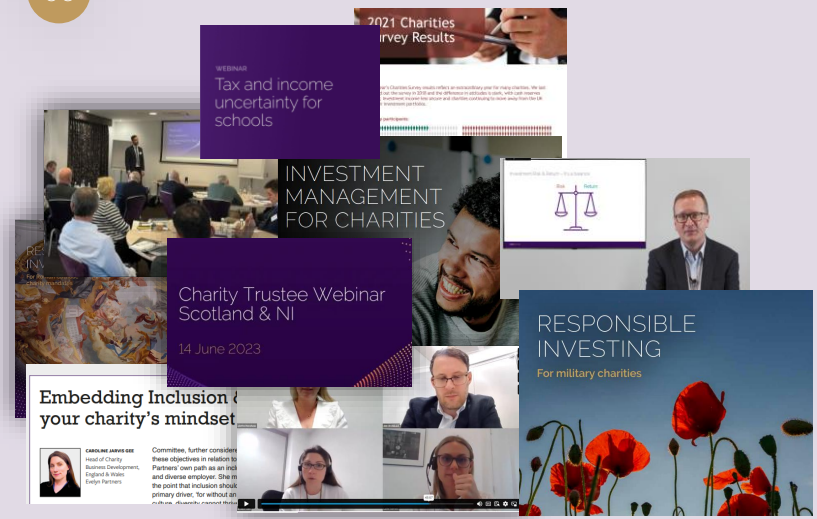
Cumulative performance %	3 Months 6 Months 1 Year 3 Years 5 Years Since Inception					
	3 Months	6 Months	1 Year	3 Years	5 Years	Since Inception
Portfolio (Gross)	1.0	-7.4	-5.7	18.7	41.2	127.6
Portfolio (Net)	0.9	-7.6	-6.2	17.0	37.7	116.9
Benchmark	-0.5	-6.5	-5.2	11.9	27.7	103.9
ARC Balanced (Net)	-4.1	-10.1	-11.1	-0.9	5.8	39.5
ARC Steady Growth (Net)	-3.7	-10.7	-12.0	1.0	10.3	67.4

Portfolio weights vs benchmark %			
	Portfolio	Benchmark	Relative
UK equities	4.0	15.0	-9.0
Overseas equities	45.1	43.0	5.1
North America	25.1	25.0	0.1
Europe ex UK	10.5	13.0	-2.5
Japan	1.8	4.0	-2.2
Pacific Basin ex Japan	18.6	11.0	7.6
Emerging markets	6.3	7.0	-0.7
Global	2.7	0.0	2.7
Bonds	1.3	0.0	1.3
Alternatives	21.0	20.0	1.0
Cash	3.5	2.0	1.5

Top 5 holdings		
	Value GBP	Weight %
FIRST SENTIER INVESTORS ICVC STEWART	2,485,273	8.2
HG CAPITAL TRUST PLC ORD GBP0.025	2,444,600	8.1
VERITAS FUNDS PLC ASIAN STERLING D	2,306,098	7.6
BH MACRO LTD ORD NPV GBP	1,438,075	4.8
ISHARES TRUST CORE S&P MID-CAP ETF	1,317,526	4.4
TOTAL	9,991,572	33.1

Proactive charity sector advice

-  **Stakeholder engagement**
Discussion & education events for trustees and senior managers
-  **Strategic advice**
Cashflow modelling, Governance advice, Reviewing your professional advisors
-  **Administrative support**
Charity specialists with proactive support on administrative issues, i.e. account transition
-  **Trustee support**
Trustee training + charity conferences, Monthly charity newsletter & webinars, Monthly economic & market presentations
-  **Peer group comparison**
Updates on best-in-class practice from similar organisations.



BESPOKE ETHICAL FRAMEWORK

ACTIVE MANAGEMENT, REPORTING & ENGAGEMENT

Our Responsible Investment Framework

1

Environmental Social Governance (ESG) security analysis
Each security is analysed by our sector specialists through an ESG lens

2

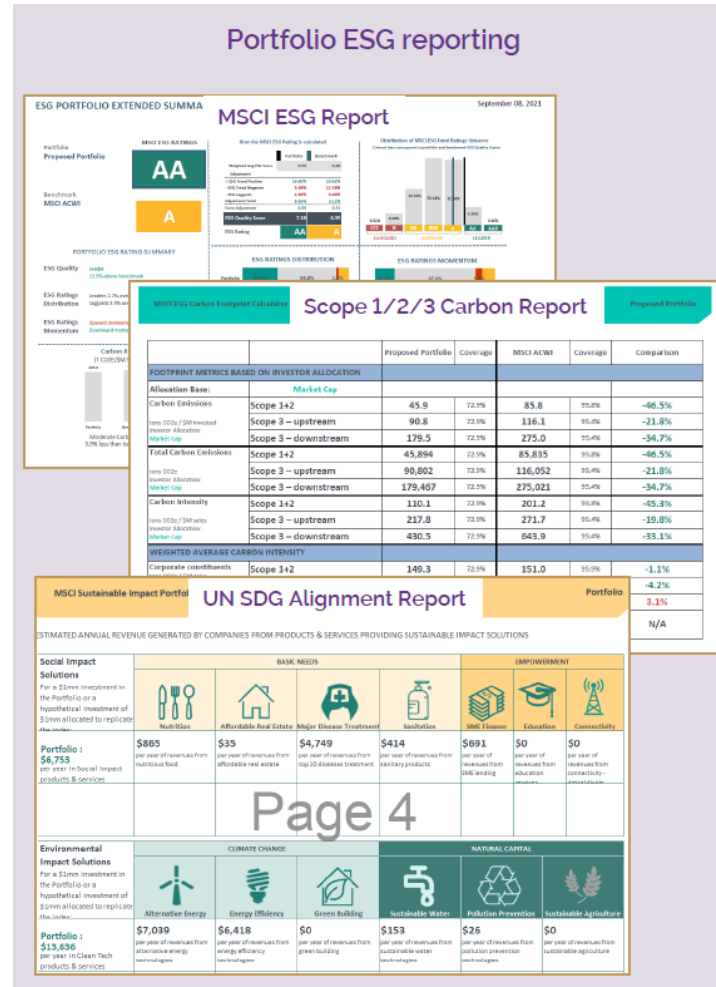
Voting
Actively vote on all positions to engender change, over 10,500 ballots cast annually

3

Engagement
Collaboratively engage with others on climate change, governance, and modern slavery

4

Reporting
Each client receives regular reports on the ESG, carbon and UN Sustainable Develop Goal (SDG) attributes of their portfolio



Climate Action 100 +



THE INVESTOR FORUM

HOW WE ADD ADDITIONAL VALUE

THOUGHT LEADERSHIP, ARTICLES, GUIDES, EVENTS



RESPONSIBLE INVESTING

For Roman Catholic charity mandates

2021 Charities Survey Results

This year's Charities Survey results reflect an extraordinary year for many charities. We last carried out the survey in 2018 and the difference in attitudes is stark, with cash reserves higher, investment income less secure and charities continuing to move away from the UK in their investment portfolios.

Survey participants:



Considering Inclusion & Diversity in your charity's investment portfolio

13th June 2023

Q&A EVELYN PARTNERS

ESG investment strategies can provide a safe haven in volatile markets



Nick Murphy
Head of Charities – Evelyn Partners



Caroline
Head of Charities Development – Evelyn Partners

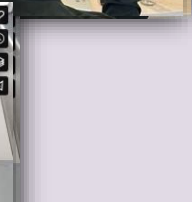
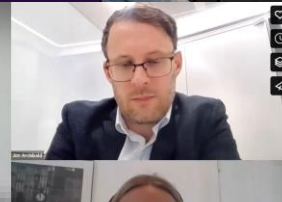


WEBINAR

Tax and income uncertainty for schools

INVESTMENT MANAGEMENT FOR CHARITIES

Helping your charity achieve its investment objectives



RESPONSIBLE INVESTING

For military charities

Embedding Inclusion & diversity in your charity's mindset and portfolio



CAROLINE JARVIS GIE
Head of Charity Business Development, England & Wales
Evelyn Partners

Committee, further considered these objectives in relation to Evelyn Partners' own path as an inclusive and diverse employer. She made the point that inclusion should be the primary driver, 'for without an inclusive culture, diversity cannot thrive.'

Charities have long known that the reach of their influence can be significant and that they are society's changemakers. As such, it is impressive to note the rise in the number of charities...

Charity Trustee Webinar Scotland & NI

14 June 2023

