

CHARITY LAW ASSOCIATION LEGAL UPDATE: 18 FEBRUARY TO 23 MAY 2017

by *Practical Law Private Client*

Charity Law Association legal update 18 February to 23 May 2017.

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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 18 February to 23 May 2017.

All links in this update are to publicly accessible resources, such as Bailii case reports. Practical Law subscribers can access additional information on all of the developments in this update from our dedicated webpage for charity lawyers. Further details are provided at the end of this update.

CHARITY COMMISSION

New Charity Commission chief executive announced

On 18 May 2017, the Charity Commission announced that its new chief executive will be Helen Stephenson CBE. She has held senior leadership roles in both the public and voluntary sectors and will succeed Paula Sussex in the post, starting on 18 July 2017.

The National Council for Voluntary Organisations (NCVO) has welcomed the appointment.

Sources:

- *Charity Commission: Helen Stephenson CBE will be the next chief executive of the Charity Commission (18 May 2017).*
- *NCVO: Appointment of Helen Stephenson – NCVO comment (18 May 2017).*

CONSULTATIONS

Charity Commission consultation on complementary and alternative medicine

On 13 March 2017, the Charity Commission launched a consultation on its approach to deciding whether organisations that use or promote complementary and alternative medicine therapies are charitable. The consultation closed on 19 May 2017.

Sources:

- *Charity Commission: Charity regulator consults on its approach to organisations promoting complementary and alternative medicines (13 March 2017).*
- *Charity Commission: Consultation on complementary and alternative medicines (13 March 2017).*



GUIDANCE AND POLICY

Charity Commission and Big Lottery Fund enter into a framework for working together

The Charity Commission has signed a memorandum of understanding (MoU) with the Big Lottery Fund (BLF) setting out how they propose to work together.

BLF distributes National Lottery funding for charitable purposes or purposes connected with health, education or the environment through grants, loans and other arrangements. It also has functions under the Dormant Bank and Building Societies Act 2008.

The MoU states that BLF is “likely” to be a relevant public authority to which the Commission may disclose information, or which may disclose information to the Commission, in connection with any of their respective functions (under sections 54 and 56 of the Charities Act 2011).

While the MoU says that it does not impose any duty or commitment on either organisation to disclose information, practitioners may wish to be aware of the potential for information to flow between them when advising charities.

Source:

- [Charity Commission: Memorandum of Understanding: Charity Commission and the Big Lottery Fund \(10 May 2017\)](#).

Charity Commission alerts housing associations to changes in land disposal regime

The Charity Commission has issued an alert to remind English registered providers of social housing that are registered charities that, with effect from 6 April 2017, they must comply with the restrictions in sections 117 to 121 and section 124 of ChA 2011 when disposing of, or mortgaging, land. This is due to changes made by the Housing and Planning Act 2016.

Source:

- [Charity Commission: Commission reminds housing associations of changes to the land disposal framework \(6 April 2017\)](#).

New guidance for auditors on matters of material significance reportable to the UK charity regulators

On 12 April 2017, the Charity Commission, the Office of the Scottish Charity Regulator (OSCR) and the Charity Commission for Northern Ireland (CCNI) published new guidance for auditors and independent examiners of charity accounts on their duty to report matters of material significance to the charity regulators.

The guidance applies to all audits or independent examinations of charity accounts conducted or reported after 1 May 2017 (regardless of the accounting period being examined).

The list of matters of material significance set out in the guidance includes two new matters that need to be reported and removes one requirement to report. The new matters underscore the need for charity trustees to ensure that they declare and properly manage conflicts of interest and related party transactions.

The regulators have, however, dropped a proposal to require auditors and independent examiners to report evidence that, without reasonable cause, charity trustees have failed to take action on matters identified by an auditor or examiner in their scrutiny of accounts for a previous year.

Source:

- [Charity Commission: Reporting matters of material significance: guidance for auditors and examiners \(12 April 2017\)](#).

New accounting templates for small charitable companies

On 31 March 2017, the Charity Commission launched new templates to help directors of charitable companies with income below £500,000 to prepare their accounts.

The templates have been produced in partnership with Companies House and are relevant for reporting periods beginning on or after 1 January 2015.

Sources:

- [Charity Commission: Commission launches ‘time saving’ accounts templates for charitable companies \(31 March 2017\)](#).
- [Accruals accounts pack \(CC17\) - SORP FRS 102 for charitable companies](#).

Charity Commission updates key financial guidance for charity trustees

The Charity Commission has updated its guidance *Charity finances: trustee essentials (CC25)*.

CC25 was originally published in 2011 under the title “Managing charity assets and resources”. It has been “refreshed and made more accessible and readable”. The Commission has said that it intends this to be the “go-to” financial publication for charity trustees and staff to address any knowledge gaps or get assurances on whether they are doing the right thing.

The Commission has also re-published its checklist *Charity governance, finance and resilience: 15 questions trustees should ask*. Small changes have been made to improve clarity.

This is all part of a drive by the regulator to ensure that charity trustees understand their basic financial responsibilities. The Commission has also said that it is conducting a wider on-going review of how it supports charity trustees in this area, working with external partners and umbrella bodies.

Sources:

- *Charity Commission: Charity Commission urges trustees to get to grips with financial duties (16 March 2017), Charity finances: trustee essentials (CC25).*
- *Charity governance, finance and resilience: 15 questions trustees should ask.*

Charity Commission issues alert on using cash couriers

On 24 February 2017, the Charity Commission issued a joint alert with the Metropolitan Police strongly advising charities against using cash couriers. This follows a recent increase in the number of cases involving the seizure of charitable funds held as cash by the police and officers of UK ports under the Proceeds of Crime Act 2002 and the Terrorism Act 2000.

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

- Not to use cash couriers, unless there are exceptional reasons for doing so.
- To promptly report any loss or seizures of charity cash to the Commission as a serious incident.
- If cash couriers are used the charity trustees must clearly record their decision making and complete a thorough, documented, risk assessment, and have an agreement in place with the cash courier. Also, the charity must have clear documentation about the origin and destination of the cash or risk it being seized by the police or ports officers.

This regulatory advice will be particularly relevant to charity trustees of charities and charitable appeals that operate overseas.

Source:

Charity Commission: Regulator warns charities against the use of cash couriers (24 February 2017).

REGISTRATION DECISION

Countryside Alliance refused registered charity status

The Charity Commission has published its decision refusing to register the Countryside Alliance as a charity. The regulator concluded that the Alliance was not established for exclusively charitable purposes for the public benefit.

The decision illustrates the regulator's approach to considering applications for charitable status by institutions with novel objects. It includes a useful analysis of the extent to which the Commission is prepared to accept, as charitable, purposes that seek to protect and promote rural life, and to represent the interests of people in the countryside.

Source:

- *Charity Commission: Decision: The Countryside Alliance (23 March 2017).*

CASE REPORTS

Failure to comply with charity land disposal rules amounted to serious mismanagement by charity trustees

On 30 March 2017, the Charity Commission published a report on its inquiry into a decision by the charity trustees of the Spiritualist Association of Great Britain Limited to dispose of the charity's leasehold interest in a property to a British Virgin Islands company for £6 million. The purchaser immediately sold the property on to another BVI registered company for over £21 million.

The regulator found that failure to comply with the statutory restrictions on disposals of charity land amounted to basic and serious mismanagement by the charity trustees. As well as reinforcing the need to comply with the statutory regime, the report provides a salutary lesson in the duties of charity trustees when considering complex commercial transactions.

Sources:

- *Charity Commission: Charity Commission finds 'basic and serious mismanagement' in selling land at charity (30 March 2017).*
- *Charity Commission: Inquiry report: The Spiritualist Association of Great Britain Limited (30 March 2017).*

Charity trustees criticised for failing to report child abuse allegation in overseas charity

The Charity Commission has published a report on its inquiry into the registered charity The Grail Trust (GT). The regulator concluded that there had been serious governance failings in the charity due to a lack of proper oversight in relation to safeguarding measures and a failure to report an allegation of child abuse to the police or to the Commission as a serious incident.

The Commission's conclusions are noteworthy because the allegations related to a children's home operated by an Indian registered charity, the Grail Trust India (GTI), and not by GT itself. GT provided financial support and advice to GTI.

The report acknowledges that the Commission has no direct regulatory remit over overseas partners or not for profit organisations that are not registered with it. However, where a registered charity supports or has overseas partners it works closely with, the Commission has said that its remit is to hold the registered charity to account over the prudence and management of that relationship. In this case, the charity trustees of GT had failed to check that GTI had proper safeguarding systems in place before working with it. Also, their initial handling of the allegations had not been impartial, risking public trust and confidence in the charity and the wider sector.

Practitioners who advise charities established to support or work closely with overseas partners will be particularly interested in the lessons to be learnt from the report.

Sources:

- [Charity Commission: inquiry report: The Grail Trust \(28 March 2017\)](#).
- [Trustees failed to report sex abuse allegations \(28 March 2017\)](#).

Regulator condemns charity’s involvement in empty property business rates scheme

A Charity Commission inquiry has found that the charity trustees of Africa Relief Trust mismanaged the charity by permitting its involvement in an empty property business rates mitigation scheme.

The case illustrates the lengths promoters of such schemes were prepared to go to secure charities’ involvement and serves as a reminder of charity trustees’ duty to act at all times in the best interests of their charity, as “prudent men and women of business”.

The Commission has renewed its warning to charity trustees against entering into business rates mitigation schemes.

Source:

- [Charity Commission: Inquiry report: Africa Relief Trust \(22 March 2017\)](#).

Regulator finds charity did not operate for public benefit

On 15 March 2017, the Charity Commission published a report on its inquiry into Kids Integrated Cancer Treatment.

The report is noteworthy because the inquiry found that the charity provided such significant levels of private financial benefit to the charity trustees, as well as to the husband of one of the charity trustees and companies owned by him, that the regulator was unable to conclude that the charity was operating for the public benefit. The charity has ceased to operate and been removed from the register of charities.

The Commission concluded that there had been serious mismanagement and misconduct in the administration of the charity and that the charity trustees had failed to comply with their duties. The Commission is considering whether it should use its new powers to disqualify the relevant individuals from being charity trustees in the future.

Sources:

- [Charity Commission: Children’s cancer charity did not operate for the public benefit \(15 March 2017\)](#).
- [Inquiry report: Kids Integrated Cancer Treatment \(15 March 2017\)](#).

CASES

EUROPEAN COURT OF JUSTICE

EU VAT cultural services exemption not directly effective (ECJ)

The ECJ has determined that Article 13A(1)(n) of the Sixth Council Directive (77/388/EEC) (now Article 132(1) (n) of Council Directive 2006/112/EC on the common system of VAT), which exempts from VAT the supply of “certain cultural services ... by bodies governed by public law or by other cultural bodies ...”, is insufficiently precise to be of direct effect.

The court rejected the taxpayer’s argument that “certain” should be construed as “all”, applying similar reasoning as that applied by the Advocate General. Specifically, the court determined that such a construction did not correspond with the ordinary meaning of the term, would deprive the term of its effect and would be liable to extend the scope of the exemption. An historical review of the legislation confirmed the appropriateness of a literal interpretation.

The matter will now return to the Court of Appeal but, given the ECJ’s ruling, HMRC’s appeal will undoubtedly succeed.

While the court’s decision shows that the use of the term “certain” in the cultural services exemption is intended to confer a discretion on member states to determine the scope of the exemption, precisely how far that discretion extends is still not clear. In *EC Commission v Spain (Case C-124/96)*, for example, the ECJ rejected the notion that the similarly-worded exemption from VAT for “certain services closely linked to sport” permitted a member state to determine the scope of the exemption by applying other criteria, such as the amount of the charge made for providing the services.

Source:

- [HMRC v British Film Institute \(Case C-592/15\) \(15 February 2017\)](#).

SUPREME COURT

Ilott v The Blue Cross and others: Supreme Court rules in favour of charities (detailed legal update)

On 15 March 2017, the Supreme Court unanimously allowed the charities’ appeal from the Court of Appeal decision in *Ilott v Mitson [2015] EWCA Civ 797* which had increased an award to a deceased’s estranged daughter (Mrs Ilott) for reasonable financial provision under the Inheritance (Provision for Family and Dependents) Act 1975 (Inheritance Act 1975). The Supreme Court held that the district judge had not made either of the two errors of law on which the Court of Appeal relied to increase the award for reasonable financial provision.

The decision is helpful for the Supreme Court's finding that the Inheritance Act 1975 requires a single assessment of what reasonable provision to make in all the circumstances, and its comments on the Court of Appeal's views on the competing positions of the claimant and the charities.

Charities and charity practitioners have welcomed the judgment for recognising that charities depend heavily on testamentary bequests to carry out their work for the public benefit, and for providing reassurance that, save in limited and specific circumstances, the wishes in a person's will must be respected and that charities do not have to justify their position as beneficiaries.

However, as Hughes LJ noted in his opening remarks, this was one of the types of case that may raise difficult individual questions under the Inheritance Act 1975, and which have to be resolved on a case-by-case basis. This seems to be an inescapable feature of the legislation. In her supplementary judgment, Hale LJ noted the range of opinions on the circumstances in which adults may or may not be able to make a claim on the estate, and which may be shared by judges having to decide the claims. However, in her view, the present law gave no help in deciding how to evaluate the claims or to balance them with other claims on the estate.

Source:

- *Ilott v The Blue Cross and others* [2017] UKSC 17 (15 March 2017).

HIGH COURT

Discontinuance of charity proceedings refused, despite lack of regulator's consent

The High Court has refused permission to discontinue charity proceedings despite the Charity Commission having refused to authorise the proceedings to continue. The proceedings concerned the validity of a contested election of members of the management committee of a charitable unincorporated association.

The decision shows that a court will not necessarily take the regulator's refusal to authorise charity proceedings, or a litigant's wish to dispense with them, at face value. It will consider all of the circumstances in the round, including the conduct and motives of the parties. It will be of particular interest to practitioners advising on internal disputes in charities.

Source:

- *Singh v Charity Commission and others* [2016] EWHC B33.

Spiritual leader a charity trustee not an employee

The High Court has held that an individual appointed as the "shepherd in charge" of the spiritual wellbeing of the congregation of a religious charity was a charity trustee and not an employee and had been validly removed from office by the trustees of the charity.

While made on its facts, the decision includes helpful consideration of the extent to which collateral documents can be used as an aid to interpreting governing documents that charity trustees are required to register with the Charity Commission. The court held that these documents should be given a similar weight to those on the public register of land.

The decision also looks at the extent to which public law rules of natural justice apply to charities and the duty of charity trustees to resolve acrimonious internal disputes.

Source:

- *Trustees of the Celestial Church of Christ v Lawson* [2017] EWHC 97.

CHARITY TAX

FIT AND PROPER PERSONS TEST

HMRC updates fit and proper persons guidance for charities

On 9 March 2017, HMRC published updated guidance on the fit and proper persons test, which is concerned with ensuring that charities are not managed or controlled by individuals who present a risk to the charity's tax position.

The guidance now includes a detailed description, by reference to the Disclosure of Tax Avoidance Schemes (DOTAS) rules and the general anti-abuse rule, of the circumstances in which a charity manager who has used or been involved in the design or promotion of tax avoidance schemes may be deemed not to be fit and proper person.

These changes are in line with those made by HMRC to its fit and proper person declaration and help sheet.

HMRC has also added the following helpful points to the guidance:

- An individual will not be considered to be actively involved in designing or promoting tax avoidance schemes merely because they work for, or in, the same organisation or partnership as an individual who has been actively designing or promoting schemes.
- In all cases, HMRC will consider all the relevant circumstances, such as, the nature and size of the scheme, the extent of the manager's involvement and the likelihood of their future participation in such schemes.

The guidance also now includes a new section explaining what HMRC means by tax avoidance.

Source:

- [HMRC: Charities: fit and proper persons test.](#)

HMRC updates charity fit and proper persons declaration

HMRC has updated its model declaration and help sheet on the fit and proper persons test for individuals who manage charities, community amateur sports clubs (CASCs) and other organisations entitled to UK charity tax reliefs.

The model form now requires charity managers to make specific, detailed declarations that they have not used, or been involved in the design, or promotion of, tax avoidance schemes, by reference, in particular, to the disclosure and promoters of tax avoidance schemes rules, and the general anti-abuse rule.

While the motive behind these changes is to help tackle misuse of charity tax reliefs, it seems unlikely that most charity managers will understand the technical terms used in the new declarations and will either make them without a full appreciation of what is being asked or will need to seek professional advice. This is unlikely to make the process of recruiting and retaining willing candidates as charity trustees any easier.

Source:

- [HMRC: Charity tax relief model declaration \(8 March 2017\).](#)

FINANCE ACT 2017

The Finance Act 2017 received Royal Assent on 27 April 2017, shortly before Parliament was dissolved pending the 8 June general election.

The following measures of interest to charity practitioners were originally included in the Finance Bill 2017 as published, but dropped during the Bill's House of Commons Committee stage on 25 April 2017:

- A measure to broaden the scope of corporation tax relief for museums and galleries, to encourage the sector to create new exhibitions and display their collections to a wider audience. The measure was to have effect from 1 April 2017, with the relief expiring in 2022 unless renewed.
- A measure to make changes to the social investment tax relief (SITR) scheme to increase the amount of money a qualifying social enterprise can raise from individuals under SITR and make changes to ensure that the scheme is properly targeted and meets EU rules. The measure was to have effect for investments made on or after 6 April 2017.
- A measure permitting corporation tax deductions

for contributions to grassroots sport. The measure was to apply to payments made on or after 1 April 2017.

Sources:

- [Finance \(No.2\) Act 2017.](#)
- [Finance \(No. 2\) Bill 2016-17](#) (the Bill as introduced).

CORPORATION TAX

Charity exemption from corporation tax on restitution interest rules

The Corporation Tax Act 2010 (Part 8C) (Amendment) Regulations 2017 (SI 2017/364) were made on 14 March 2017. They include an exemption for charities that are subject to corporation tax from rules that apply a 45% corporation tax charge on restitution interest.

Sources:

- [Corporation Tax Act 2010 \(Part 8C\) \(Amendment\) Regulations 2017 \(SI 2017/364\).](#)
- [HMRC: Corporation Tax: changes to Part 8C of the Corporation Tax Act 2010 tax on restitution interest payments \(22 March 2017\).](#)
- [CTG: CTG secures charity exemption to 45% tax on restitution interest \(23 March 2017\).](#)

GIFT AID

Gift Aid: regulations allow for different income tax rate for Scottish taxpayers

The Scotland Act 2016 (Income Tax Consequential Amendments) Regulations 2017 (SI 2017/468) came into force on 24 March 2017. These regulations make consequential changes to various provisions of income tax legislation following devolution of the power to set Scottish income tax rates to the Scottish Parliament for the tax year 2017-18 and subsequent tax years.

Regulation 10 amends section 414 of the Income Tax Act 2007 to apply the Scottish income tax rate limits to a donation made by a Scottish taxpayer that qualifies for relief under the Gift Aid scheme. Charities may wish to consider the implications for Gift Aid administration should different income tax rates be set for Scottish taxpayers. It may well become necessary for new Gift Aid declarations to be introduced to establish whether donors have Scottish taxpayer status, as the amount that a charity will be entitled to reclaim on donations will differ if divergent rates are introduced.

Source:

- [Scotland Act 2016 \(Income Tax Consequential Amendments\) Regulations 2017 \(SI 2017/468\).](#)

HMRC updates Gift Aid Small Donations Scheme

(GASDS) guidance notes

HMRC has updated its detailed guidance notes on the Gift Aid Small Donations Scheme (GASDS) for changes contained in the Small Charitable Donations and Childcare Payments Act 2017 that came into effect on 6 April 2017.

GASDS is now covered by two separate guides. One details the position for small donations collected before 6 April 2017, while the other sets out the modified rules for small donations collected on or after 6 April 2017.

Sources:

- [HMRC: Charities: detailed guidance notes: Chapter 8: The Gift Aid Small Donations Scheme before 6 April 2017.](#)
- [Charities: detailed guidance notes: Chapter 8: The Gift Aid Small Donations Scheme from 6 April 2017.](#)

SPRING 2017 BUDGET

The Chancellor, Philip Hammond, delivered his Spring Budget on 8 March 2017.

Very few of Mr Hammond's announcements had a direct impact on charities. The sector's calls for tax cuts to support charities (such as reducing irrecoverable VAT for charities, increasing mandatory business rates relief for charities to 100% and a targeted exemption from insurance premium tax) all fell on deaf ears.

The sector welcomed confirmation that charities will be eligible to access the £300 million discretionary business rates fund, as well as plans to exempt charities from the making tax digital reporting requirements (although the Charity Tax Group is arguing for this to extend to charity trading subsidiaries).

The following were particularly notable for their absence:

- Any further commitment from the government to use LIBOR banking fines to support charities.
- Any update on the progress of the single online portal to apply to register as a charity with the Charity Commission and to claim charity tax reliefs from HMRC.
- Any further news on the government's proposals to simplify the Gift Aid donor benefit rules or on Charity Commission funding.

Charities that provide accommodation and board and lodging to their employees (such as schools, hospitals, churches and higher education institutions) will be interested in the government's promised consultation on proposals to bring the tax treatment of such benefits up to date.

Sources:

- [HM Treasury: Spring Budget 2017.](#)
- [HM Government: Spring Budget 2017: policy costings.](#)
- [HMRC: Spring Budget 2017: overview of tax legislation and rates \(Overview\).](#)
- [HM Treasury: Chancellor Philip Hammond's Spring Budget 2017 speech.](#)
- [HM Treasury: Spring Budget 2017 \(landing page\).](#)
- [HMRC: Spring Budget 2017: tax related documents \(landing page\).](#)

FUNDRAISING

DATA PROTECTION

EU General Data Protection Regulation: new guide for charity fundraisers

On 4 May 2017, the Institute of Fundraising published a new guide addressing key issues for charities and charity fundraisers in relation to direct marketing under the General Data Protection Regulation (GDPR) that comes into effect in the UK on 25 May 2018.

The guide will be an important resource to help charities understand the coming changes in data protection law and provides practical tips to support their preparations for the introduction of the GDPR.

Source:

- [Institute of Fundraising: Institute of Fundraising launches new GDPR guide and training for charities \(4 May 2017\).](#)

ICO fines eleven charities for misusing donors' personal data

The Information Commissioner's Office (ICO) has issued eleven charities with a monetary penalty under section 55A of the Data Protection Act 1998 for misusing donors' personal data.

The ICO investigations found that a number of the charities secretly screened millions of donors so they could target them for additional funds. The charities traced and targeted new or lapsed donors by piecing together personal information obtained from other sources, and/or traded personal details with other charities creating a large pool of donor data for sale.

The ICO fined the following charities:

- The International Fund for Animal Welfare (£18,000).
- Cancer Support UK (formerly Cancer Recovery Foundation UK) (£16,000).
- Cancer Research UK (£16,000).
- The Guide Dogs for the Blind Association (£15,000).
- Macmillan Cancer Support (£14,000).
- The Royal British Legion (£12,000).
- The National Society for the Prevention of Cruelty to Children (£12,000).
- Great Ormond Street Hospital Children's Charity (£11,000).
- WWF-UK (£9,000).
- Battersea Dogs' and Cats' Home (£9,000).
- Oxfam (£6,000).

The ICO has exercised its discretion in reducing the level of fines, taking into account the risk of adding to any distress caused to donors by the charities' actions. The same approach was taken to fines issued to the Royal Society for the Prevention of Cruelty to Animals and British Heart Foundation in December 2016.

The Charity Commission has opened compliance cases into all 11 charities to assess whether the charity trustees have acted in accordance with their duties under charity law.

Sources:

- [ICO: Press release: ICO fines eleven more charities, 5 April 2017.](#)
- [Charity Commission: Charity Commission responds to ICO issuing penalties to 11 charities \(5 April 2017\).](#)

DOOR-TO-DOOR COLLECTIONS

New guidance for door-to-door charity collection bag companies

On 23 March 2017, the Committee of Advertising Practice (CAP) issued new guidance for businesses who act as commercial participants in the door-to-door collection of bags of donated goods, with a proportion of the proceeds being given to charity.

The guidance requires businesses to be upfront with consumers about the nature of the service they provide. In particular, collection bags must clearly state that they are a commercial enterprise and that a proportion of the profits from the sale of donated goods will go to the relevant charity. Businesses have until 2 June 2017 to bring their collection bags in line with the new guidance.

Source:

- [ASA: New guidance for door-to-door charity collection bag companies \(23 March 2017\).](#)

OTHER ITEMS OF INTEREST

Consultation on proposals to revise charity audit practice note

The Financial Reporting Council (FRC) is consulting on proposals to revise *Practice Note 11: The audit of charities in the United Kingdom* (PN11).

The proposals reflect changes to UK accounting standards (FRS 102) and the new Charities SORP, the implementation of revised International Standards on Accounting (UK) in 2016, and lessons learned from recent high profile reports about charities, such as the House of Commons Public Administration and Constitutional Affairs Select Committee report on the collapse of Kids Company (see [Legal update, Kids Company collapse: lessons and recommendations](#)).

Practitioners may, in particular, be interested in changes to PN 11 on auditors' responsibility to report matters of material significance to charity regulators (see [Legal update, New guidance for auditors on matters of material significance reportable to the UK charity regulators](#)) and on testing the assumption that a charity is operating as a going concern.

The consultation closes on 25 August 2017.

Source:

- [FRC: Invitation to Comment: Proposal to revise PN 11: The audit of charities in the United Kingdom \(12 May 2017\).](#)

Employer debt: DWP consult on draft regulations introducing new deferred debt arrangements

The DWP has published draft regulations that will amend the employer debt rules affecting multi-employer defined benefit (DB) schemes to introduce a new arrangement for dealing with employer debts, referred to as a "deferred debt arrangement".

A deferred debt arrangement will allow an employer to defer the requirement to pay an employer debt on ceasing to employ an active member, provided that a number of conditions are met. The new arrangement will sit alongside other easements for managing employer debts and will be available to both associated and non-associated employers as well as employers already in a period of grace. The arrangement will come to an end in certain specified circumstances (such as if the deferred employer employs an active member or restructures). In addition, the trustees will be able, in certain circumstances, to end a deferred debt arrangement by giving notice to a deferred employer.

The regulations also make a number of technical amendments to the Employer Debt Regulations (for instance, to clarify what will happen when there have been two successive employment-cessation events).

The regulations are currently drafted to come into force on 1 October 2017. The consultation ran until 18 May 2017.

Source:

- *DWP: The draft Occupational Pension Scheme (Employer Debt) (Amendment) Regulations 2017: consultation (21 April 2017).*

House of Lords Select Committee on Charities reports

On 26 March 2017, the House of Lords Select Committee on Charities published its 154 page report, Stronger Charities for a stronger society.

The report includes 42 recommendations covering a broad range of issues, including governance and accountability, charity trustee skills and training, payment of charity trustees, grants, contracts and commissioning, volunteering, merging and closing charities, regulation and the role of government.

The Select Committee has expressed “grave concerns” about the Charity Commission proceeding with any proposal to charge charities. Charity sector representative bodies have welcomed the comprehensive and positive report.

Sources:

- *Parliament: Charities are the eyes, ears and conscience of society, says Committee (26 March 2017).*
- *House of Lords Select Committee on Charities: Stronger charities for a stronger society (HL Paper 133).*
- *NCVO: Lords committee expresses concern over plan to charge charities, warns Charity Commission on its board appointments (26 March 2017).*
- *ACEVO: Comprehensive and progressive - charity and social leaders encouraged by Lord's report (26 March 2017).*
- *Charity Commission: Charity Commission responds to Select Committee on Charities (26 March 2017).*

FOIA: Prejudice to public authority’s exercise of functions exemption (section 31(1)(g)) protects information held by Charity Commission (Information Commissioner)

On 22 February 2017, the Information Commissioner (IC) partly upheld the Charity Commission’s (Commission) decision to withhold internal communication and correspondence with a registered charity, in reliance on sections 31(1)(g) of the Freedom of Information Act 2000 (FOIA) (prejudice to a public authority’s exercise of its functions for specified purposes), where this detailed its investigatory approach and would lead to a “chilling effect” on investigations of other charities.

The requester requested information relating to the Global Warming Policy Foundation (GWPF), which the Commission had refused in reliance on the exemption in section 31(1)(g) of FOIA and citing the purposes specified by sections 31(2)(c) and 31(2)(f) (protecting charities against misconduct or mismanagement, whether by trustees or another person, in their administration).

The IC held that the Commission had correctly applied sections 31(1)(g) and 31(2)(f) of FOIA, in respect of information provided by GWPF to the Commission concerning GWPF’s operations, responses from the Commission offering advice and assistance and internal Commission discussions detailing its investigatory approach. It was in the public interest to withhold some of these documents from disclosure, in part because of the chilling effect on the Commission’s future communications with GWPF and any other charities that dealt with the Commission, given the Commission’s policy of encouraging charities to voluntarily disclose information to it.

Information that did not relate to the Commission’s investigative processes did not, in the IC’s view, engage section 31 and should be disclosed. The IC upheld the Commission’s reliance on other FOIA exemptions in respect of smaller tranches of requested information.

The case provides an interesting example of a relatively rarely used statutory purpose under section 31(2) of FOIA. It will be relevant to public authorities that seek to rely on section 31(1)(g) and one of the law enforcement purposes in section 31(2). In particular, where they operate a system of voluntary disclosure with entities they regulate or investigate, or hold documents that are sensitive to their regulatory or investigative approach, which may include internal communications or communications with the entity under investigation. (ICO Decision notice: FS50623442 (22 February 2017).)

Source:

- *ICO Decision notice: FS50623442 (22 February 2017).*

Institute of Legacy Management: good practice guidance

The Institute of Legacy Management (ILM) has published good practice guidance setting out an ethical framework for legacy professionals. The ILM is the membership body for those responsible for administering donors’ legacies to charities.

The ILM has identified five key principles that it considers should guide legacy managers and administrators in their work: sensitivity, transparency, integrity, collaboration and informed.

The guidance includes sections on initial communications after notification of gifts, working with solicitors, working with lay executors, working with multiple charities, income recognition and accruals, tax, claims against the estate and communications following receipt of gift.

Practitioners who advise charities may wish to ensure that their clients' legacy managers and administrators are aware of this guidance. Private client practitioners may also find it useful to know about the guidance when dealing with a charity's legacy managers and administrators.

Source:

- *ILM: Good Practice Guidance (version 1, February 2017).*

STEP Blog publishes guidance on how to obtain a Legal Entity Identifier (LEI)

On 23 February 2017, the STEP Blog published a post reminding practitioners that every legal entity will need to register with the London Stock Exchange (LSE) and get a Legal Entity Identifier (LEI) by 3 January 2018 before it can trade on financial markets in the UK.

The blog post explains that all legal entities, including trusts (except bare trusts), companies, pension funds (except self-invested personal pensions), charities and unincorporated bodies that are parties to financial transactions will need an LEI.

The post includes some additional guidance relating to discretionary trusts with legal restrictions that prevent disclosure of details of the trust. It explains that the LSE will accept a validation from the trust itself and will not require sight of the trust deed.

If the LEI has not been obtained by 3 January 2018 then investment firms will not be able to provide the legal entity with investment services.

Source:

- *The STEP Blog: Have you registered your LEIs? (23 February 2017).*

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 all of 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 profile symbol 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 trustees and conflicts of interest: new standard documents

The Charity Commission expects charity trustees to identify and address effectively any conflicts of interest that may affect them or their charity. Failing to manage conflicts of interest may lead to charity trustees' decisions being invalid or open to challenge, and can damage a charity's reputation or trust and confidence in charities generally.

To assist practitioners who advise charities and charity trustees we have published the following new Standard documents:

- *Charity trustees: conflicts of interest: policy* - setting out procedures for identifying, monitoring and managing actual and potential conflicts of interest.
- *Charity trustees: conflicts of interest: declaration* - a declaration of interests for use by an individual who is appointed as a charity trustee.
- *Charity trustees: conflicts of interest: register* - to record and monitor interests declared by charity trustees.

These documents are part of our suite of resources on charity trustees and their duties, which include the following Practice notes:

- *Duties of charity trustees: an overview.*

- [Charity trustees and conflicts of interest.](#)
- [Charity trustees: expenses, payments and benefits.](#)

All of these resources can be found in the “Charity trustees” tab in the Topics section on the left hand side of our webpage, [For charity lawyers.](#)

New resource on charities and social investment

We have published new [Practice note, Charities and social investment.](#)

This note provides detailed guidance on the powers of charities and charity trustees to make investments with a view to directly furthering the charity’s purposes, as well as achieving a financial return for the charity. It looks, in particular, at the new power for charities to make social investments introduced on 31 July 2016 by section 15 of the Charities (Protection and Social Investment) Act 2016 and the duties that charity trustees must comply with when making such investments.

The note has been contributed by [Luke Fletcher](#) (Partner) and [Oliver Hunt](#) (Solicitor) from [Bates Wells Braithwaite.](#)

ASK

Practical Law Private Client publishes the questions we receive from subscribers, together with the 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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