



CHARITY LAW ASSOCIATION

TWENTY SEVENTH ANNUAL CONFERENCE

Thursday, 7 October 2021



CHARITY LAW ASSOCIATION

TWENTY SEVENTH ANNUAL CONFERENCE

Thursday, 7 October 2021

AGENDA

9.00am – 9.15am	Registration with conference platform and networking	
9.15am – 10.05am	Welcome to morning session and Keynote	Welcome: Jo Coleman, Chair of the CLA and Conference Co-Chairs Keynote: Ian Karet , Charity Commission
10.05am – 10.35am	The Charities Bill	Nicola Evans , BDB Pitmans LLP
10.35am – 11.15am	Technical Update from the Commission	John Maton , Charity Commission
11.15-11.20pm	Break	
11.20am – 12.30pm	Co-Counsel providing opinion to CLA on the ClIFF case	Robert Pearce QC , Radcliffe Chambers and Michael Furness QC , Wilberforce Chambers
12.30pm – 2.00pm	Lunch and networking	
2.00pm – 2.45pm	Welcome to afternoon session and Legal Update	Welcome: Conference Co-Chairs Legal Update: Liz Brownsell , Birketts LLP
2.45pm – 2.50pm	Break	
2.50pm – 4.05pm	EDI panel discussion	Chair: Clariss D'cruz , Wrigleys Solicitors Lynda Thomas , CEO of Macmillan Cancer Support Kamran Mallick , CEO of Disability Rights UK Professor Iyiola Solanke , Chair in EU Law and Social Justice, Leeds School of Law and Dean for EDI, University of Leeds Sung-Hyui Park , Bates Wells
4.05pm – 4.20pm	Northern Irish Update	Sarah Burrows , Edwards & Co
4.20pm – 4.25pm	Close	Conference Co-Chairs
4.25pm – 5.00pm	Networking	

The Chairs of the Conference

Simon Steeden and Kate Parkinson

This year's conference is co-hosted by Simon Steeden and Kate Parkinson both of whom are on the Executive Committee of the Charity Law Association. Simon Steeden is a partner at Bates Wells and Kate Parkinson is a senior associate at BDB Pitmans.

The Speakers

Liz Brownsell, Partner and Head of Charities, Birketts LLP

Liz Brownsell is a Partner and Head of Charities at Birketts LLP. She began her career at Allen & Overy as a trainee and then a corporate associate, before leaving the City and specialising in charity law in 2010. Liz acts for a broad range of charity and other third sector clients and also advises academies and other education sector clients. Liz is an active member of the CLA, sitting on the Standing Committee on model governing documents and having been involved in a number of CLA working parties over the years, including Lord Hodgson's review, the Law Commission consultation on technical issues in charity law, and the overhaul of the Code of Governance. Liz regularly delivers webinars, seminars and training on a variety of charity law topics, as well as in-house training for her clients.

Sarah Burrows, Partner at Edwards & Co. Solicitors, Belfast

She is very knowledgeable about the subject matter and will always follow through and ensure the project progresses. She is also well connected and understands third-sector charity work in Northern Ireland very well. – Chambers UK 2020

Sarah has 20+ years' experience in company/corporate law and has concentrated on the specialised area of charity law for the past 10 years. Her charity clients range from small local groups to large national charities. She is a lecturer and tutor in charity, commercial and company law at the Institute of Professional Legal Studies, Queens University, Belfast and an author of Jordan's Charities Administration Service.

Sarah has been a governance trainer for the Boardroom Apprentice Programme since its inception and is a recipient of the Queens Award for Voluntary Service through NI Hospice.

Claris D'cruz, Wrigleys Solicitors

Claris D'cruz is a consultant lawyer working with Wrigleys Solicitors. She has 25 years' experience as a charity lawyer combined with frontline understanding from voluntary sector leadership roles. Claris has worked with some clients for over 20 years as a trusted external advisor, supporting charity clients on a wide array of governance and constitutional issues. Claris specialised in charity law and practice by working as an in-house lawyer for a registered charity and then as a legal advisor at the Charity Commission, before moving into private practice.

Claris has a deep understanding of EDI issues gained from advising clients and from being a governor of a major independent school, a governor of Excelsior Academy which has a diverse community, an advisor on an EDI Task Force and a director of Northumberland Cricket Board which is recognised as being ahead of the curve on its EDI journey.

Recent EDI related work includes assisting various charities and NfPs to embed diversity and inclusion by supporting them to carry out governance reviews, board audits and EDI self-assessments and by helping charities to develop their EDI framework, policies and plans. Claris specialises in training boards on EDI issues and how to create and maintain an inclusive board culture.

Nicola Evans, Charities Counsel, BDB Pitmans LLP

Nicola Evans is the charities knowhow lawyer for the charities and social enterprise 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. While on the CLA Executive Committee, she chaired the CLA Working Party on the Law Commission's consultation, Technical Issues in Charity Law, and has continued liaising with the Law Commission team and working party members. Nicola is ranked in both the Chambers and Legal 500 directories and is a regular speaker, blogger and commentator on charity law developments.

Michael Furness QC, Wilberforce Chambers

Michael's practice encompasses advisory and contentious trust, tax and charity work. He has an extensive litigation practice both here and overseas, with several appearances in the House of Lords or Supreme Court in this jurisdiction and three appearances in the Court of Final Appeal in HK. In the charities field, before taking silk Michael appeared regularly for the Attorney-General in charity matters, and since then he has continued to advise charities on trusts and tax issues, and to undertake charity litigation. Over the last couple of years issues of governance within charities has been a major feature of his instructions, and has involved advising on constitutional issue, and on conflicts of interest. He also advises on tax related issues, including the involvement of charities in tax avoidance schemes (The Cup Trust) and HMRC challenges to the administration of gift aid.

Ian Karet, Interim Chair of the Charity Commission

Ian joined the Board in January 2019 and was appointed Interim Chair in February 2021. He is a solicitor and a partner of Linklaters LLP.

Ian specialises in Intellectual Property and Technology and handles a range of commercial matters and disputes. He is a Solicitor Advocate, a qualified arbitrator and trained mediator. He read Chemistry at Oxford.

Ian was appointed Deputy High Court Judge in England and Wales in September 2020, and is also a member of the Civil Justice Council. He has also served on the board of the International Association for the Protection of Intellectual Property and writes and speaks on intellectual property issues.

Kamran Mallick CEO of Disability Rights UK

Kamran Mallick joined Disability Rights UK as its Chief Executive in July 2017. He is the former Chief Executive of Action on Disability, the Hammersmith-based disability organisation, where he worked for 13 years.

Kamran has also worked for the spinal injury charity Aspire as well as running his own training and consultancy business.

He serves on the boards of the Lyric Hammersmith, Wheels for Wellbeing and Lloyds Bank Foundation. He is a former chair of Candoco dance company and board member of Inclusion London. He is also a member of Gatwick Airport Passenger Experience Group and a former member of Transport for London's Independent Disability Advisory Group.

Kamran was included in the Shaw Trusts Powerlist 100 - Most influential disabled people in 2018 and was in the top 10 in 2020.

John Maton, Assistant Director of Legal Services, Charity Commission for England and Wales

John is the Assistant Director of Legal Services within the Legal and Accountancy Services Directorate of the Charity Commission. John's role involves leadership and management of the Commission's Legal Services division, as well as leading and advising on key legal issues in the Commission's work. John previously served for four years as the Commission's Head of Charitable Status, leading a team of lawyers specialising in the law and policy relating to charitable status and registration.

Before joining the Commission John worked as a solicitor in private practice, advising charities, non-profit organisations, regulators and other public sector bodies on matters relating to charity law, governance, regulation and legal structures.

Sung-Hyui Park, Senior Associate (Charity & Social Enterprise), Bates Wells

Sung-Hyui is a Senior Associate in the Charity & Social Enterprise team at Bates Wells. She regularly advises charities - and other organisations seeking to have a positive social and/or environmental impact – on the full range of their activities including formation, governance, capital raising and general charity and commercial law issues. She has a particular interest in supporting charities and other impact organisations to embed EDI (equity, diversity and inclusion) principles within their legal structures and activities. Before joining Bates Wells, Sung-Hyui worked for 10 years in the Banking & Finance team at Clifford Chance, where she advised on a wide range of financing transactions.

Robert Pearce QC, Radcliffe Chambers

Robert Pearce QC practises at the Chancery Bar and has a specialism in charity law. He has been instructed in many leading charity law cases in recent years, and before taking silk he was Standing Counsel to the Charity Commission. He is Consulting Editor for the Charities volume of Halsbury's Laws of England. He is shortlisted by Chambers and Partners for the award of Chancery Silk of the Year 2021.

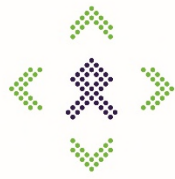
Professor Iyiola Solanke, Chair in EU Law and Social Justice, Leeds School of Law and Dean for EDI, University of Leeds

Professor Solanke is the Dean for EDI at the University of Leeds and Chair of European Union Law and Social Justice within the University of Leeds Law School. She is a former Visiting Professor at the Harvard University School of Public Health and Fernand Braudel Fellow at the European University Institute. She is the author of *'EU Law'* (Pearson 2015), *'Making Anti-Racial Discrimination Law'* (Routledge 2011) and *'Discrimination as Stigma - A Theory of Anti-Discrimination Law'* (Hart 2017) as well as many articles in peer reviewed journals. Professor Solanke is an Academic Benchers of the Inner Temple and founder of the Black Female Professors Forum, which promotes the visibility and progress of Black women in academia. She recently chaired the Inquiry into the History of Eugenics at UCL and is currently leading an ESRC project looking into the impact of COVID on practices for wellbeing and resilience in Black, Asian and minority ethnic families and communities.

Lynda Thomas, Chief Executive, Macmillan Cancer Support

Lynda Thomas was appointed Chief Executive of Macmillan Cancer Support in March 2015. Since joining Macmillan in 2001 Lynda has worked in the communications and fundraising departments.

Lynda is currently Chair of the NHS England Cancer Programme Charity Forum, Chair of the Richmond Group and a member of the NHSE National Cancer Board, NHS Assembly and the Cicely Saunders Institute Advisory Board.



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KEYNOTE

**Ian Karet
Charity Commission**



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THE CHARITIES BILL

**Nicola Evans
BDB Pitmans**

THE CHARITIES BILL – WHERE ARE WE NOW?

**Charity Law Association Conference
7 October 2021**

Nicola Evans, Charities Counsel, BDB Pitmans LLP

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THE CHARITIES BILL

- How did we get here?
 - A brief look at the background and the CLA's involvement
- Where are we now?
 - Highlighting changes in the Bill
- A look ahead
 - Towards Royal Assent and implementation (and beyond?)

HOW DID WE GET HERE?



CHARITIES BILL – HOW DID WE GET HERE?

- July 2011 – Law Commission 11th programme of law reform: charity law “selected issues”
- November 2011 – 5 year review of Charities Act 2006
- July 2012 – Lord Hodgson’s Report, Trusted and Independent: Giving charity back to charities
- June 2013 – PASC Report
- June 2013 – Law Commn T/Ref
- Sept 2013 – Government response to Reports
- Oct 2013 – Law Commn T/Ref updated (social investment)
- 2014 – Social investment consultation and recommendations
- March 2015 – TICL consultation
- March 2016 - C(P&SI) Act 2016
- Sept-Oct 2016 – TICL Supplementary consultation
- Sept 2017 – TICL Report + draft Bill
- March 2021 – Government response

GOVERNMENT RESPONSE

- Of 43 Law Commission recommendations:
 - 30 accepted in full
 - 3 in part
 - 5 rejected
 - 5 for other bodies
- Rejected in part:
 - R6: Review of PCO publication policy
 - R7: PCO guidance
 - R16: connected persons and wholly owned subsidiaries
- Rejected:
 - R8: PCO user group
 - R18: Disposal of designated land
 - R27: Review basis upon which CC decisions can be challenged
 - R40: Authority of charity proceedings where CC conflict of interests
 - R43: Remove requirement for AG consent for CC reference

CLA INVOLVEMENT

- CLA WPs for Lord Hodgson Review, PASC inquiry and 2010 charity land consultation
- CLA WP for Social Investment consultation
- TICL project – CLA WPs for:
 - 2015 TICL consultation, and
 - 2016 supplementary consultation (governing documents and trust corporations)
- CLA combined WP – ongoing liaison, including commenting on draft Bill in 2017 and 2021
- TICL CLA WP approach – think “charity” first; think “small” first; consistency; easier admin with appropriate oversight; flexibility for future



WHERE ARE WE NOW?

A tour through the Charities Bill ...



CHARITIES BILL 2021

- 11 May 2021 - Queen's Speech:
 - to “support the voluntary sector by reducing unnecessary bureaucracy”
- Law Commission Bill procedure
- 26 May 2021 – 1st reading
- 7 July 2021 – 2nd reading committee
- 14 July 2021 – 2nd reading
- Sept 2021 - Special Public Bill Committee - evidence



CHARITIES BILL - STATS

- 7 Parts
- 41 Clauses
- 2 Schedules
- 46 pages – sounds short (isn't)
- Explanatory notes – 39 pages and properly explanatory
- Keeling schedule – Law Commission website
- <https://www.lawcom.gov.uk/project/charity-law-technical-issues-in-charity-law/>
- 6 new/amended Henry VIII powers



WHAT THE BILL DOESN'T DO

- No major overhaul of the law
- No change to (e.g.):
 - definition of charity/charitable purpose
 - public benefit
 - annual accounts/returns provisions
- Likewise, CC investigatory and inquiry powers (amended by C(P&SI) Act 2016, not here)



CHARITIES BILL - OVERVIEW

- Part 1 – Purposes, powers and governing documents:
 - Charitable companies
 - CIOs
 - Unincorporated charities
 - Charities established by Royal Charter or Act
 - Cy-près and schemes
 - Permanent endowment
 - Special trusts
 - Ex gratia payments etc
- Part 2 – Charity land
- Part 3 – Charity names
- Part 4 – Charity trustees
- Part 5 – Charity mergers
- Part 6 – Legal proceedings
- Part 7 - General

CHARITIES BILL – AMENDING GOVERNING DOCUMENTS

- Charitable companies – s198 (objects) closer to s226 (CIO objects)
- CIOs – closer alignment of amendment process with that for companies
- Unincorporated charities – new “regulated alterations” regime
- Companies, CIOs and Unincorporated charities
 - change of objects - new matters for CC to have regard
 - CC consent – power to give (or require to give) notice
- Royal charter corporations
 - New power to amend Charter (to extent you don’t have express power)
- Statutory charities
 - Tweak to s73 procedure

CHARITABLE COMPANIES AND CIOs

Companies:

- Objects – tweak to s198 to align with CIO equivalent
- Makes clear that only (but any) change which **alters the charitable purpose** (i.e. its substance) will be a regulated alteration
- E.g. “the advancement of education including, but not limited to, by the provision of a school” - removing reference to the provision of a school would not be a regulated alteration

CIOs:

- Aligns process for amending constitution with that for charitable companies
- In particular:
 - when amendments take effect
 - amendments conditional on CC consent
 - amendments to take effect on later date specified in resolution

CHARITABLE COMPANIES AND CIOs - OBJECTS

CC consent – current:

- Whether the new objects are exclusively charitable
- Whether the trustees' decision to make the change is a rational one in the circumstances of the charity
- That the new objects do not undermine or work against the previous objects

CC consent – Bill:

- Purposes of the charity when it was established (if and so far as reasonably ascertainable)
- Desirability of securing that the purposes are (so far as reasonably practicable) similar to the purposes being altered
- Current social and economic circumstances
- Same will apply for (new power) unincorporated charities
- NB Consent - Public notice power

UNINCORPORATED CHARITIES

- New statutory power to amend governing document – new ss280A-B replace s280
- Very wide power
 - Cannot be excluded or modified by governing document
 - In addition to express powers
 - Some changes subject to CC prior written consent
- Amending purposes – no requirement for cy-près occasion or scheme
- CC evidence – 45% of registered charities are unincorporated associations
- NB Repeal - ss267-279 powers (for unincorporated charities with income £10k or less and no designated land)

UNINCORPORATED CHARITIES – CC CONSENT

- Prior written consent
- More extensive list than for companies/CIOs – any amendment which would:
 - alter the purposes
 - alter provision directing property on dissolution
 - provide authorisation for benefit by charity trustees or members or persons connected with them
 - alter a restriction making property permanent endowment
 - require the consent of a person (other than a charity trustee or member), unless they consent
 - affect any right directly conferred by the trusts on a person named in the trusts or who holds office or other position specified in the trusts (other than charity trustee or member), unless they consent
 - confer power on a person to make an amendment within any of the above
- Public notice power – when CC giving consent
- Objects – have regard to same matters as for companies/CIOs

S280 PROCESS V S280A

Current (s280):

- If distinct membership:
 - Charity trustees - majority resolution
 - Members – at a general meeting, 2/3 (or no vote and no expression of dissent)
 - Otherwise – majority charity trustees
- s280 – more limited scope

Bill (s280A-B):

- If distinct membership entitled to attend and vote at general meeting:
 - Charity trustees - majority resolution
 - Members – at GM, 75%+ (or no vote and no expression of dissent); otherwise unanimous
 - Otherwise – 75%+ charity trustees

ROYAL CHARTER AND STATUTORY CHARITIES

Royal Charter:

- New power to amend any provision in Charter
 - Only if no express power
- Process:
 - If distinct membership:
 - Charity trustees – majority
 - Members – 75%+/no dissent at GM, otherwise unanimous
 - Otherwise, 75%+ charity trustees
- Takes effect when approved by Order in Council

Statute:

- Process in s73 (Parliamentary schemes) is simplified:
 - to make schemes subject to negative procedure, whether amending private or public general Act

CHARITY LAND DISPOSALS AND MORTGAGES

- Gist – Part 7 regime retained, but with some tweaks:
- Clarifies scope of Part 7 ChA 2011
- Amends exceptions to Part 7
- Streamlines self-certification process on dispositions
- Widens/clarifies who can advise on dispositions and mortgages
- New requirement for wording in contract
- NB Land held for stipulated purposes – unchanged



CHARITY LAND – SCOPE AND EXCEPTIONS

- Scope is clarified
 - E.g. will not apply where a trustee holds land on trust for multiple beneficiaries, one or more of which is a charity
- New exception: dispositions by a liquidator, provisional liquidator, receiver, mortgagee or an administrator
- Disposal to another charity (s117(3)(c))
 - Excepted unless disposal made:
 - commercially (with a view to achieving best price), or
 - as social investment
 - Cf current: disposition made otherwise than for best price and is authorised by trusts

CHARITY LAND – CP AND ADVICE

- Connected persons:
 - Not CP: charity employee where disposition is short fixed-term or periodic tenancy to them to use as their home
 - NB Law Commission recommendation also to take out charity trading subsidiaries was rejected by Government
- Advice:
 - For report on dispositions:
 - Widened from “qualified surveyor” to “designated adviser”
 - For report or for mortgages:
 - Can include charity trustees, officers and employees of the charity, including if they do so in the course of their employment by the charity, if suitably qualified

CHARITY LAND – ADVERTISING AND REPORT

Current regime:

- Charity trustees must:
 - obtain and consider report from qualified surveyor
 - advertise proposed disposition as advised in report, and
 - decide they are satisfied, having considered surveyor's report, that the terms are best that can reasonably be obtained for the charity

Bill regime:

- Charity trustees must:
 - obtain and consider report from designated adviser
 - and
 - decide they are satisfied, having considered adviser's report, that the terms are best that can reasonably be obtained for the charity
- Requirements for report to be streamlined by regulations

CHARITY LAND – WORDING IN INSTRUMENTS

Current regime:

- Statement in contract and conveyance/mortgage re whether Part 7 applies
- Where Part 7 applies, charity trustee certificate in conveyance/mortgage re how Part 7 complied with
- Protection for purchaser/mortgagee where certificate compliance (and for purchaser/mortgagee in good faith for value otherwise)

Bill regime:

- Statement in contract and conveyance/mortgage re whether Part 7 applies and where it applies statement of how Part 7 complied with
- Protection for purchaser/mortgagee where statement compliance (and for contractor in good faith and purchaser/mortgagee in good faith for value otherwise)

PERMANENT ENDOWMENT

- Revised definition of “permanent endowment” for Act
- Simplification of powers to release restrictions on spending capital
- New power to borrow from permanent endowment
- New limited power to use permanent endowment to make social investments
- Repeal of ss288-289 re special trusts



PERMANENT ENDOWMENT DEFINITION (FOR ACT)

Current definition (s353):

A charity is to be treated for the purposes of this Act as having a permanent endowment unless all property held for the purposes of the charity may be expended for those purposes without distinction between

(a) capital, and

(b) income;

and in this Act “permanent endowment” means, in relation to any charity, property held subject to a restriction on its being expended for the purposes of the charity

Bill definition:

For the purposes of this Act, property is “permanent endowment” if it is subject to a restriction on being expended which distinguishes between income and capital

PE - POWER TO SPEND CAPITAL – SS281-282

- Clarifies - power available to corporate charities holding PE
- Trigger for CC oversight:
 - simplified to where fund value exceeds £25k (adjusted if fund borrowed from)
 - £25k can be amended by regs
- Obtaining CC consent:
 - Time limit for CC to respond - reduced from 3 months to 60 days to align with other time limits in the Act
 - As now, time period may be extended for compliance with any CC requirements to give public notice or provide information
- Borrowing from fund – adjustments made to integrate power to spend with new power to borrow

NEW POWER TO BORROW FROM PE (NEW S284A-D)

- New statutory power:
 - in addition to any express power
 - can be restricted or excluded by the trusts of the charity
- Power:
 - to borrow a “permitted amount” (up to 25%)
 - subject to repayment within 20 years
 - 25% and 20 years amendable by regs
- Provision made for:
 - funds subject to the total return approach
 - adjusting for repayments and new borrowings
 - trustees not being able to repay (seek CC directions)

PE AND SOCIAL INVESTMENTS

- Generally, trustees cannot invest PE in social investments with an anticipated negative financial return (where the trustees expect to receive back less than the initial capital outlay), because it would contravene the restriction on expenditure of capital
- The Bill introduces a *limited* new power to use permanent endowment to make social investments that trustees could not otherwise make (i.e. because they are expected to make a loss)
 - It is limited to charities that have already opted in to investing on a total return basis (under section 104A(2))
 - New regulations will also be made to govern the use of the power for such funds

EX GRATIA PAYMENTS

- Small payments (or waiver):
 - New statutory power to make small ex gratia payments without CC authority
 - Threshold £1,000 to £25,000 - determined by income of charity
 - Threshold is per payment, not cumulative (and amendable by regs)
 - Power can be excluded or restricted by trusts of charity
- New statutory test
- Test for ex gratia payments (small payments and CC authority) : where charity trustees
 - have no power to take the action, but
 - in all the circumstances could reasonably be regarded as being under a moral obligation to take it
- Confirms that charity trustees can delegate the function

CHARITY TRUSTEES

- Trust corporation status - automatic conferral on corporate charity acting as trustee of a charitable trust
- New CC power to confirm a trustee's appointment
 - with would-be trustee's consent
 - where there is doubt or a potential defect in the appointment or election process
 - consequent powers regarding vesting of property and validating acts before confirmation
- New CC power to authorise trustee payment or retention of benefit for work carried out where it would be inequitable otherwise
 - CC must have regard to various factors, including any express prohibition in the trusts of the charity
- Statutory power to pay trustees for services extended to goods

CHARITY NAMES

- CC s42 power to direct charity name changes will be expanded
- Will extend to directing charity to stop using “working name” (not consulted on)
- In respect of a name “too like” another charity’s, it will no longer be time limited (currently one year from registration) and will extend to any charity (not just registered charities)
- CC will also have:
 - power to delay registration of a charity if it makes a s42 direction requiring a change of name (not working name)
 - power to delay entry of name change in register if it makes s42 direction requiring the new name (not working name) to be changed
 - Subject to “maximum postponement period”

OTHER PROVISIONS

- Proceeds of failed charity appeals:
 - Simplifies circumstances where proceeds can be applied cy-près – replace current regime with 4 new occasions (unreasonable to return, small donations, donors not identified or found or unidentifiable)
 - New power for charity trustees to apply cy-près by resolution, with CC consent if proceeds exceed £1000
- Charity mergers - gift to a merged charity:
 - Corrects current drafting defect in s311(2)
- CC/court Scheme-making power – confirmation that extends to charitable companies, CIOs and other charities
- Tribunal proceedings – New power for the tribunal (First-tier and Upper) to make an “authorised costs order” (ACO)
 - advance assurance for trustees that they can pay reasonable costs out of charity funds

LOOKING AHEAD



WHAT HAPPENS NEXT?

- Bill - Committee stage in HL
 - some way to go
 - but amendments limited by Law Commission Bill procedure
- Implementation will be phased
 - CC has confirmed:
 - At least 12 new/updated Trustee guidance documents
 - More than 20 new/updated internal guidance documents
 - Update internal casework processes and operational training
 - External messaging and communications
 - Complex digital system updates for online services – likely to take “some time”

AND ...

- 2022 –Thresholds review
 - Law Commission R1 accepted by Government
 - Review all financial thresholds in Charities Act 2011 “at least every 10 years”
 - Subject to resources, first review in 2022
- Further ahead?
 - Ongoing reform of Companies House and the UK’s company registration framework – includes move towards “file once with government” approach
 - Ongoing collaboration between Companies House, HMRC and Charity Commission – but a “long-term ambition”
- Ideas for next round of charity law reform?

THE CHARITIES BILL

**Charity Law Association Annual Conference
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Nicola Evans, Charities Counsel, BDB Pitmans LLP

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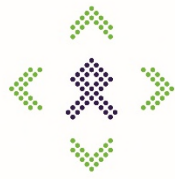


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TECHNICAL UPDATE FROM THE COMMISSION

**John Maton
Charity Commission**



Charity Commission Technical Update

John Maton
**Assistant Director, Legal
Services**



CHARITY COMMISSION
FOR ENGLAND AND WALES

INTRODUCTION

- The Commission's permission functions
- Section 105 Charities Act 2011 – authorising actions expedient in the interests of the charity
- Section 106 Charities Act 2011 – authorising ex gratia payments



CHARITY COMMISSION
FOR ENGLAND AND WALES

The Commission's role

- Quasi-judicial powers
- Statutory framework
- Strategic objectives



Permissions applications

- Case officers, supported by professional advice
- Wide range of applications
- Pandemic context



Before applying

- What specifically is being applied for and why?
- Do you have the necessary power?
- If not, can you give yourself the power?



“

Section 105

“...where it appears to the Commission that any action proposed or contemplated in the administration of a charity is expedient in the interests of the charity, the Commission may by order sanction that action, whether or not it would otherwise be within the powers exercisable by the charity trustees in the administration of the charity”



CHARITY COMMISSION
FOR ENGLAND AND WALES

Conditions and constraints

- “Interests of the charity”
- Not if expressly prohibited by governing document or an Act – s105(8)(a)
- Cannot change purposes – s105(8)(b)

What we need to see

- Why expedient in the interests of the charity?
- Evidence to support the proposed decision





Section 106

The Commission may authorise trustees to make an application of the charity's property or waive an entitlement of the charity to receive property, where the trustees:

“(a) (apart from this section) have no power to take the action, but

(b) in all the circumstances regard themselves as being under a moral obligation to take it.”

Re Snowden [1970] Ch 700 – “a power which is not to be exercised lightly or on slender grounds but only in cases where it can be fairly said that if the charity were an individual, it would be morally wrong of [them] to refuse to make the payment”



CHARITY COMMISSION
FOR ENGLAND AND WALES

What we need to see

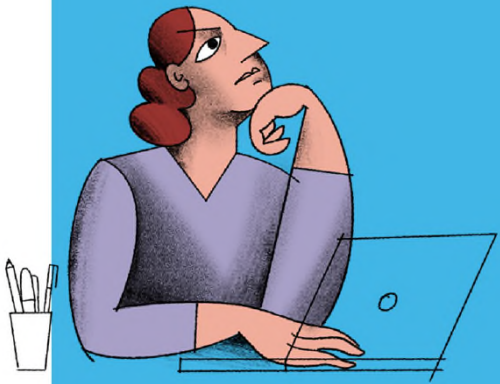
- Why the moral obligation on the trustees?
- Independent evidence

Charities Bill changes – ex gratia

- Statutory power to make small ex gratia payments
- Delegation of decision-making



Any Questions?





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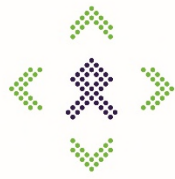
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**CO-COUNSEL PROVIDING OPINION TO CLA
ON THE CIFF CASE**

**Robert Pearce, QC
Radcliffe Chambers**

**Michael Furness QC
Wilberforce Chambers**



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LEGAL UPDATE

**Liz Brownsell
Birketts LLP**

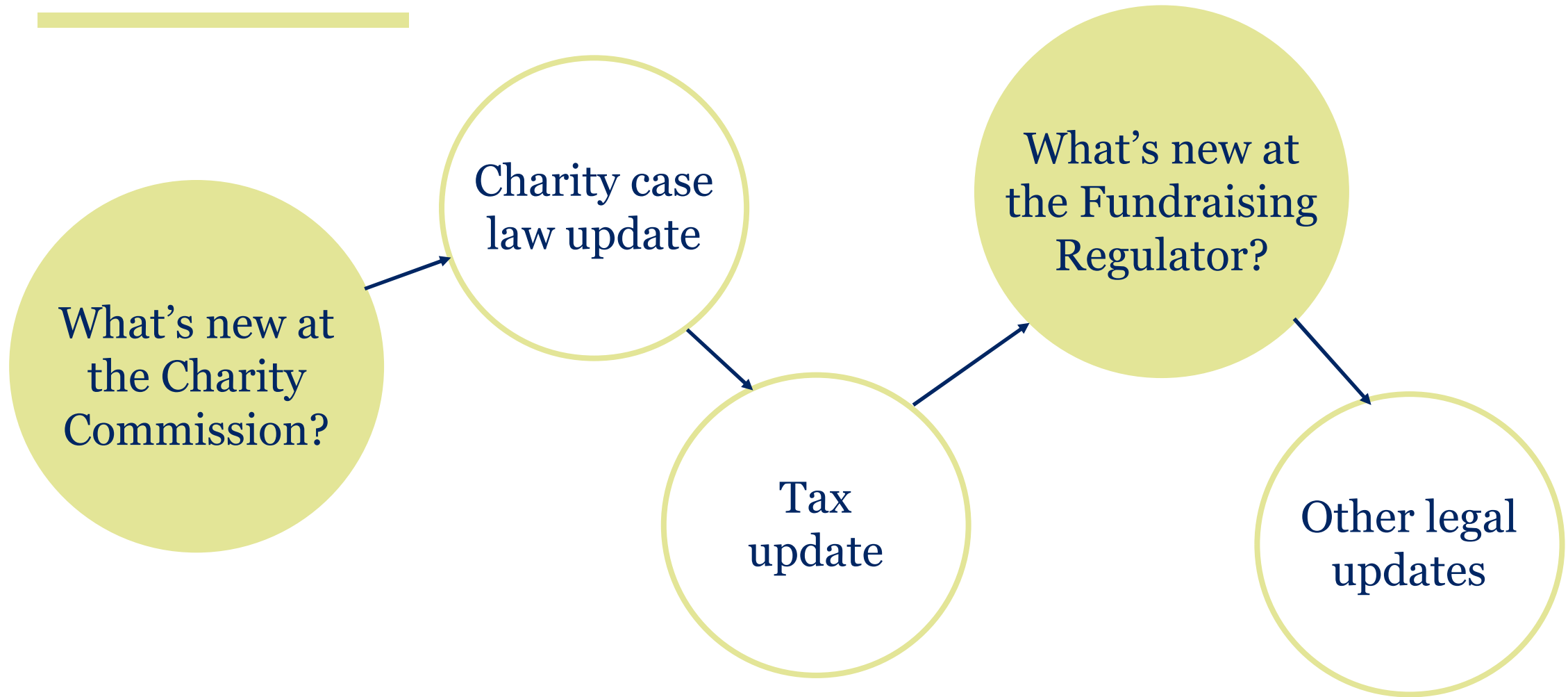
Legal Update

CLA Conference 2021

Liz Brownsell

Partner, Head of Charities

Agenda for today



What's new at the Charity Commission?

Birketts

Clear Legal Advice

What's new at the Charity Commission?



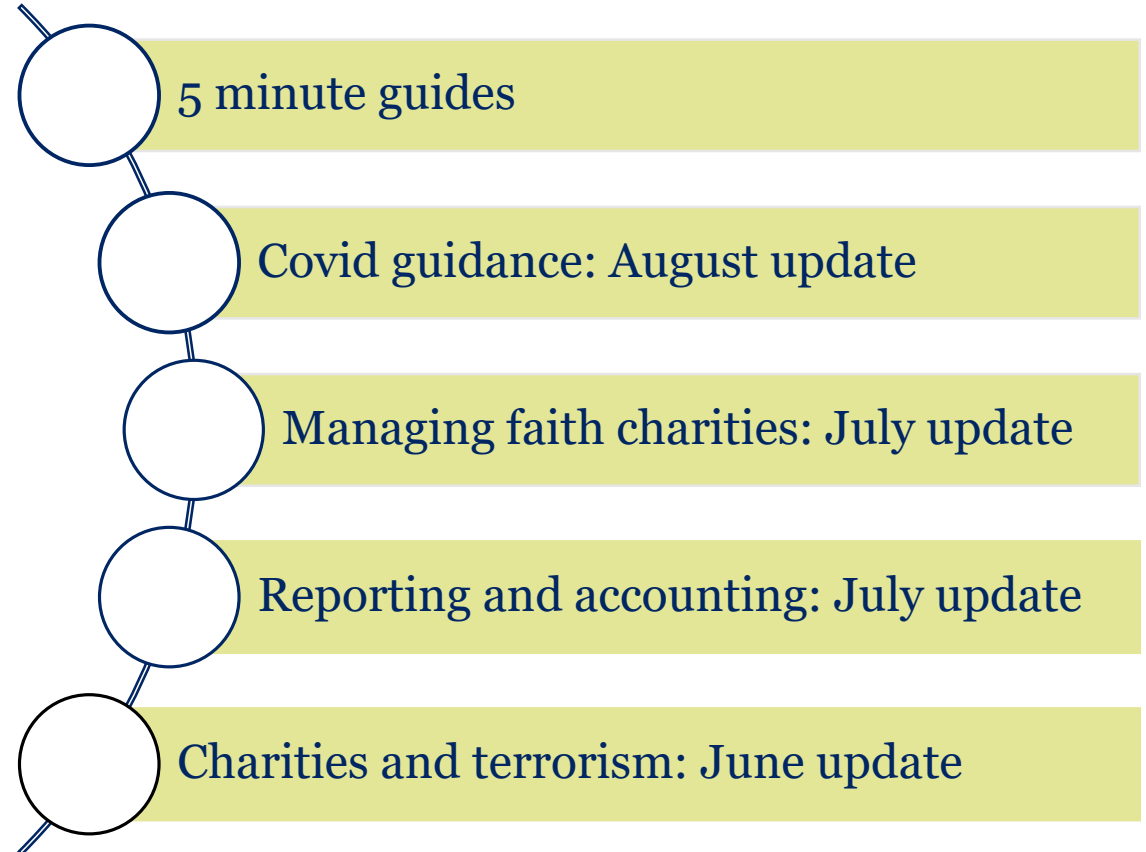
New guidance published

Charity Commission inquiries and compliance case work

Updating CC14 guidance - responsible investment

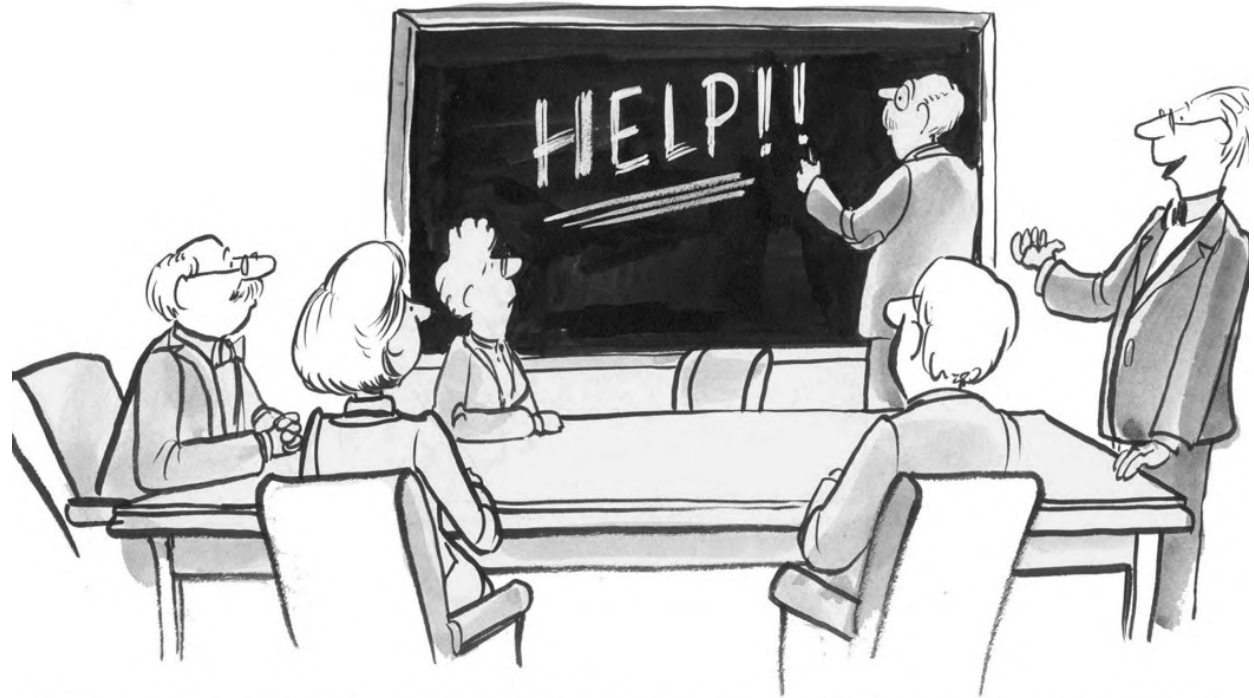
New guidance published

Charity Commission: new and updated guidance



5 minute guides

- Charity purposes and rules
- Managing charity finances
- Managing conflicts of interest
- Making decisions
- What to file and how to get help



"We like to greet our Regulatory Compliance hires with one word."

Charity Commission inquiries and compliance casework

Birketts

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Charity Commission emphasis on decision-making



“Trustees must take decisions in a way that meets the requirements of charity law and their governing documents. This includes recording decisions properly, so there is no doubt about what was decided and why. Written records should be sufficient to allow someone to understand the issues involved, decisions made and the reasons for them, particularly for important or controversial decisions.”

Some examples

National
Trust

Bersam
Trust

Nanaksar

Alternative
Animal
Sanctuary

Combined
Funds Ltd

Afghan
Heroes

Barnardos

Trustee disqualified for maximum term

Under Tree Schools

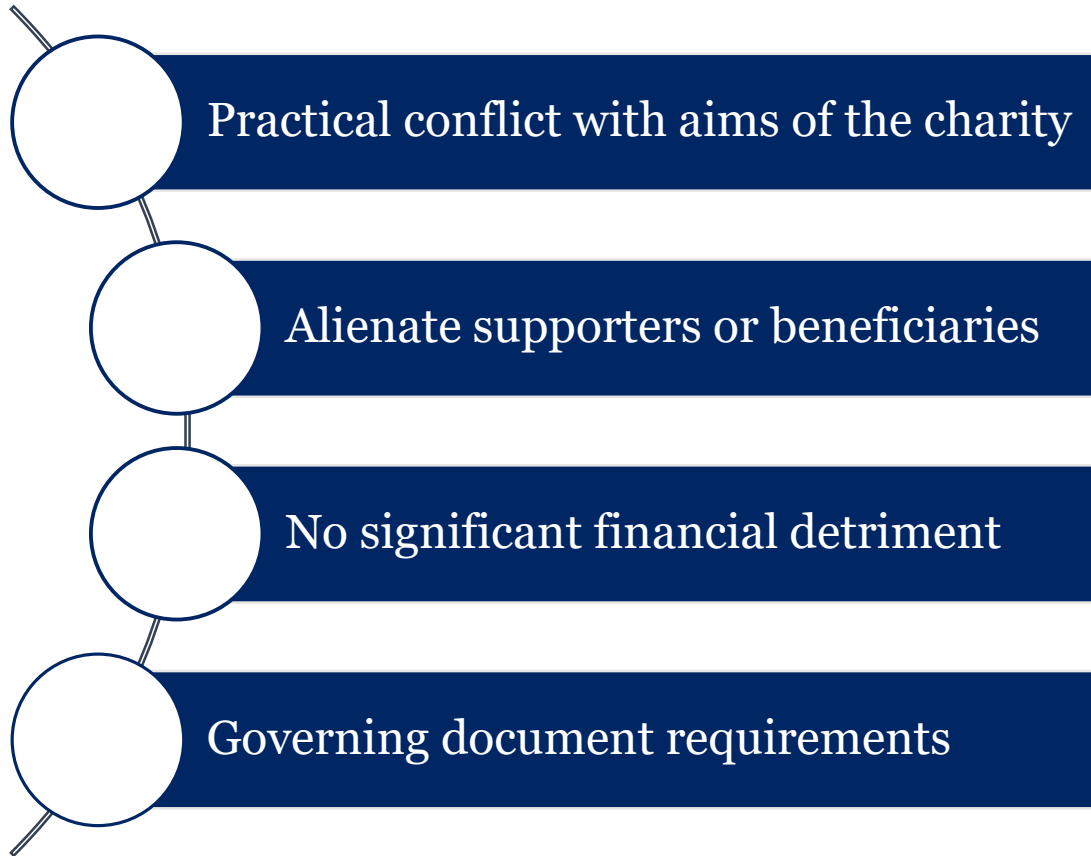
“On 10 December 2020 the Commission disqualified Revd. Ayok-Loewenberg from acting as a trustee and consequently from holding an office or employment with senior management functions at any charity in England and Wales under section 181A of the Act for a period of 15 years.”



Updating CC14 guidance

Charity Commission consultation on responsible investment guidance

Recap: Bishop of Oxford case

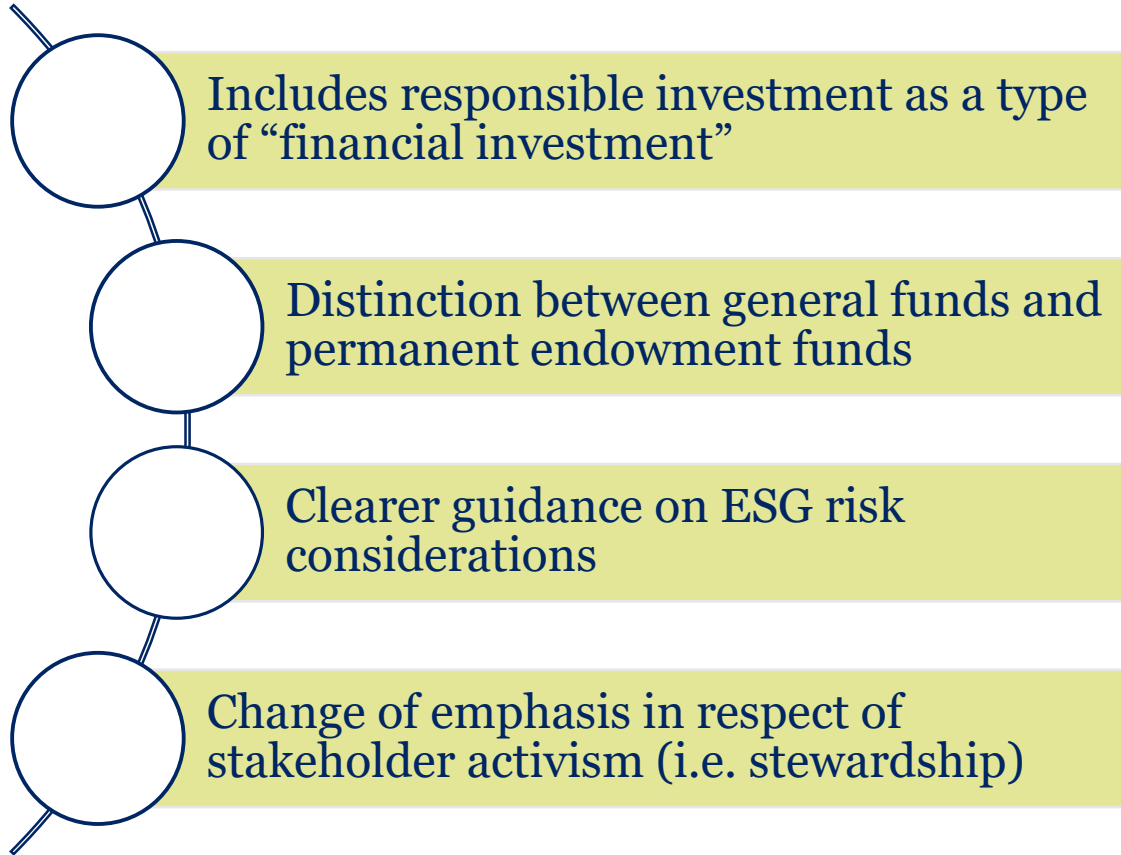


Charity Commission blog (November 2020)

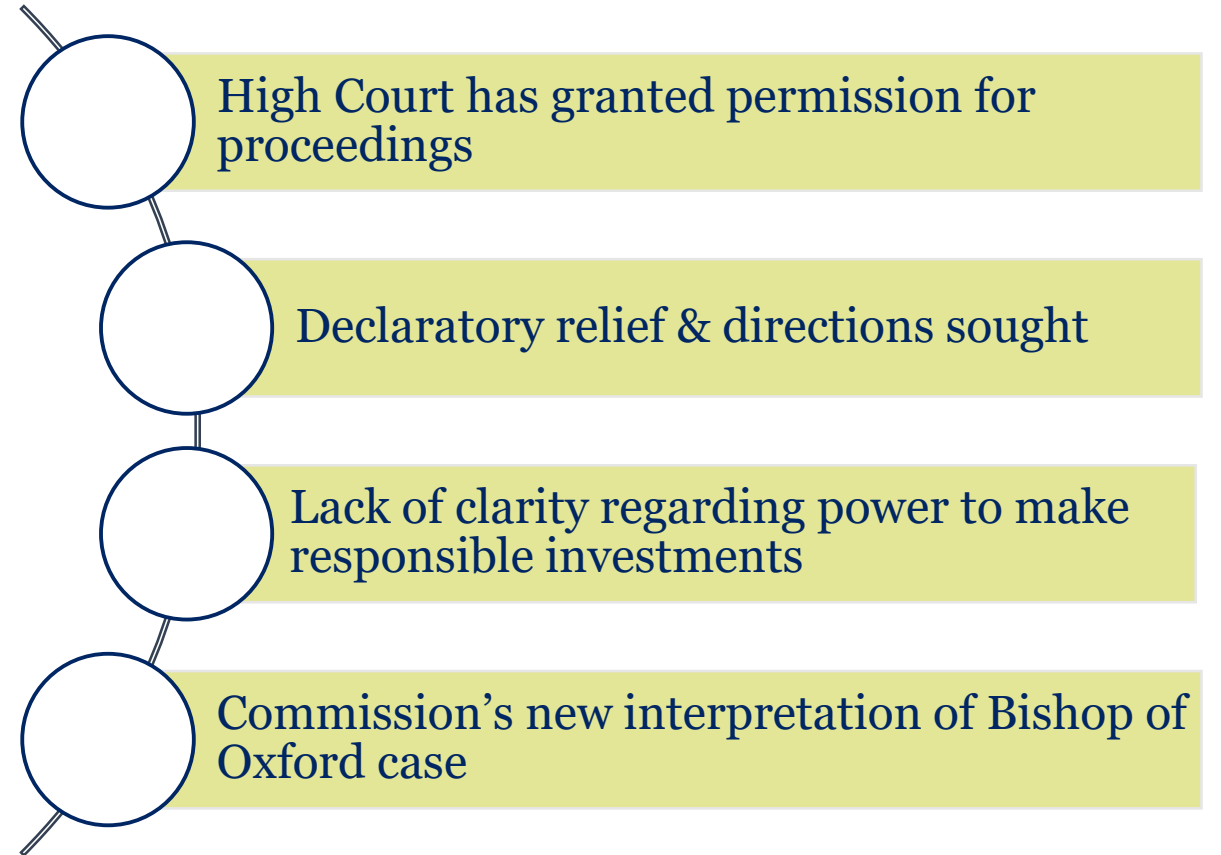
“It is clear from the responses we received that some trustees consider the legal framework itself to be a barrier. There are wide differences in interpretations of the legal framework which clearly breed uncertainty about decisions trustees are legally allowed to make. Some believe the case law is ‘outdated’ and at odds with public expectations of how charities should behave...

What clearly unites all the barriers highlighted during our engagement is a theme of trustee confidence in their ability – whether in the sense of permission or capability – to make decisions about how to invest in the context of their charity’s specific circumstances.”

Key changes in draft updated guidance



Butler-Sloss v Charity Commission



Butler-Sloss v Charity Commission

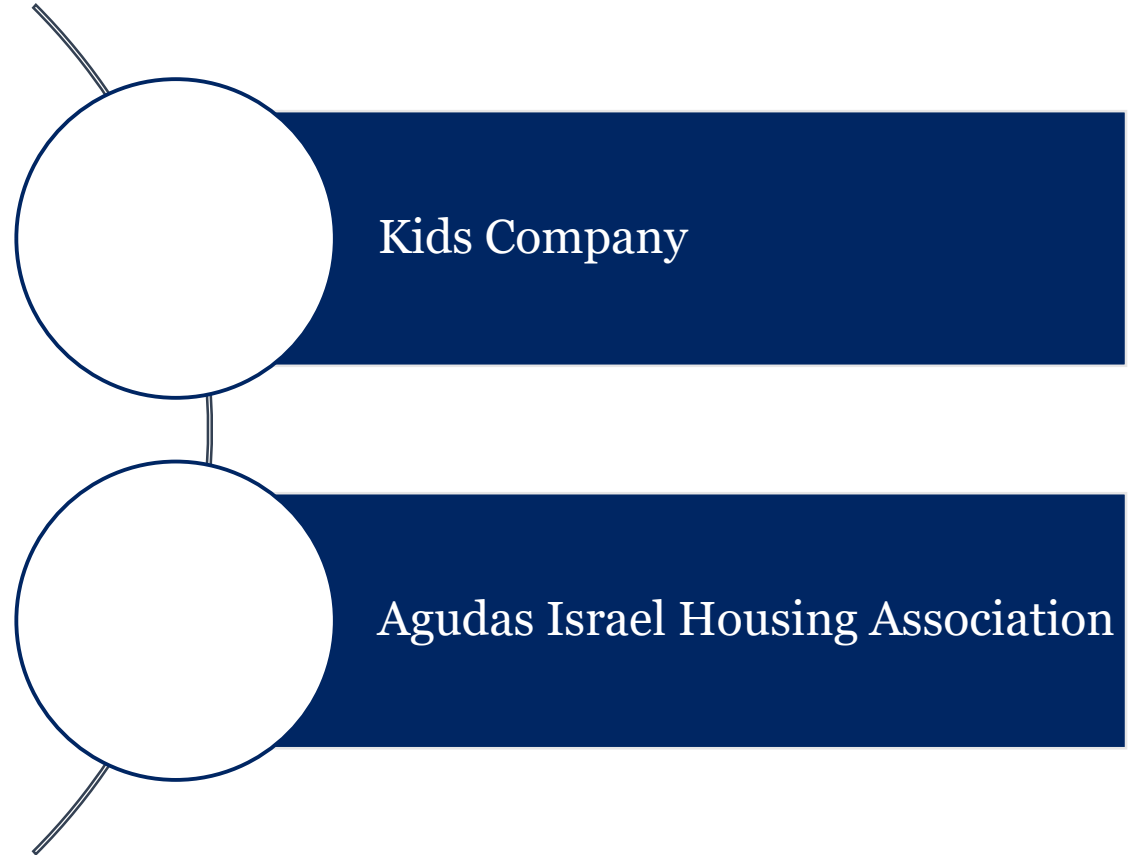
“There is uncertainty as to the law in this area. The leading and nearly only case in this field is... "The Bishop of Oxford case". That case was some thirty years ago now, and things have considerably moved on since then in terms of both so-called ethical investment policies and the severe impact of climate change...

In any event it can safely be said that the proposed proceedings raise highly topical issues that are seemingly unresolved by legal authority. It is clear that a further judgment of the court in this area will not only provide the necessary protection to these trustees but will also provide much needed clarity to charity trustees generally.”

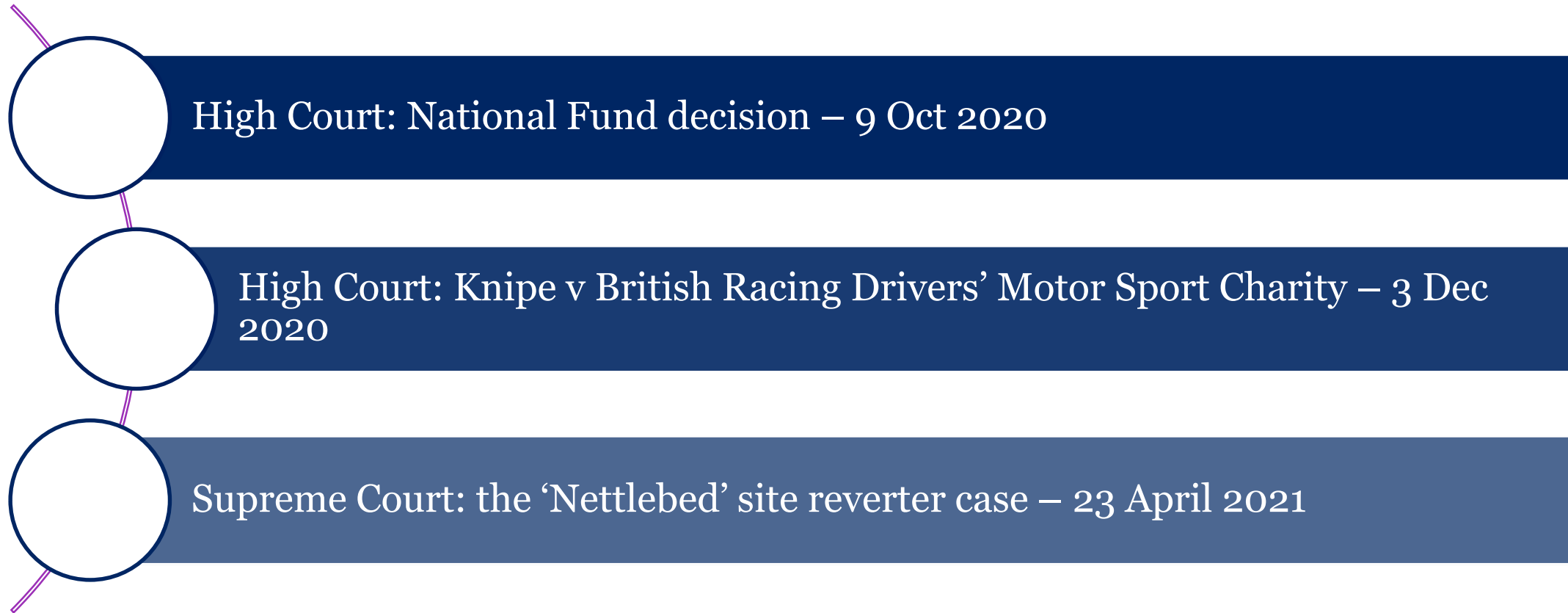
~ Mr Justice Michael Green

Charity case law update

Cases already covered in CLA Members Meetings



Other interesting charity case law



Tax update

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A (brief) tax update!



- Gift aid on waived loan repayments
- Tribunal: Swanage Sea Rowing Club
- Court of Appeal: Nuffield Health
- Trust Registration Service

What's new at the Fundraising Regulator?

Birketts

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What's new at the Fundraising Regulator?

New guidance

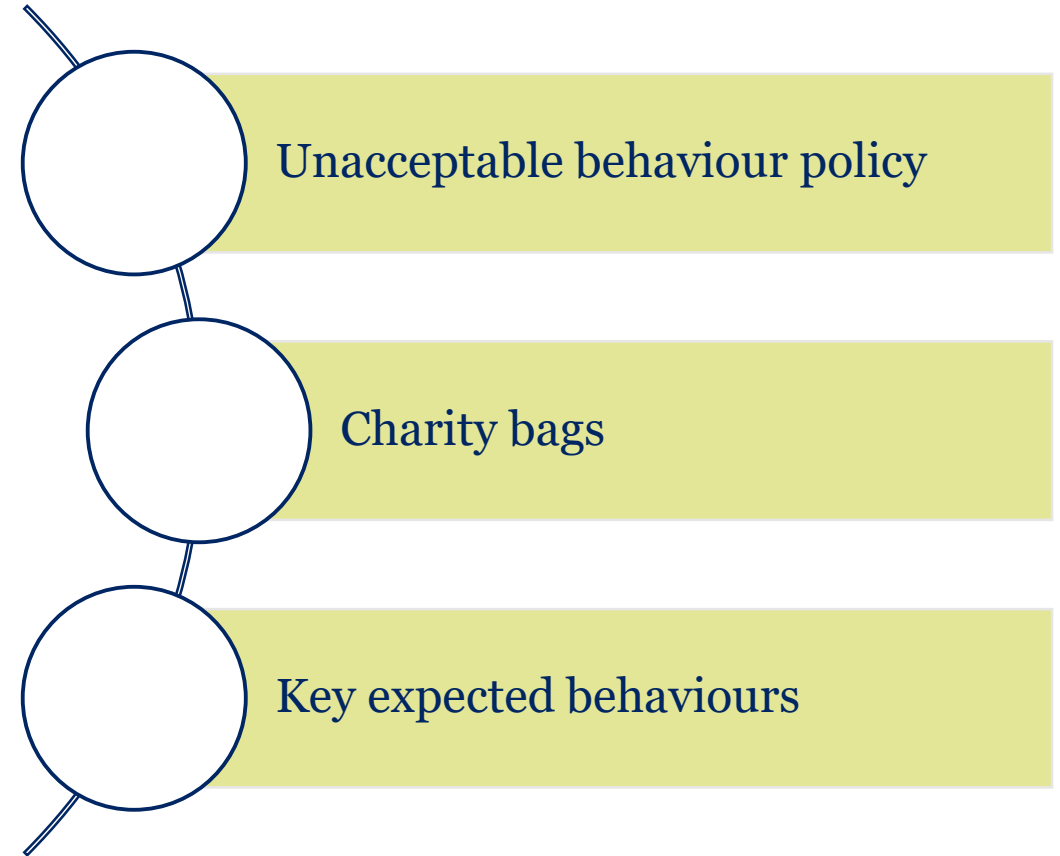
Themes from investigation reports

The importance of complaints handling

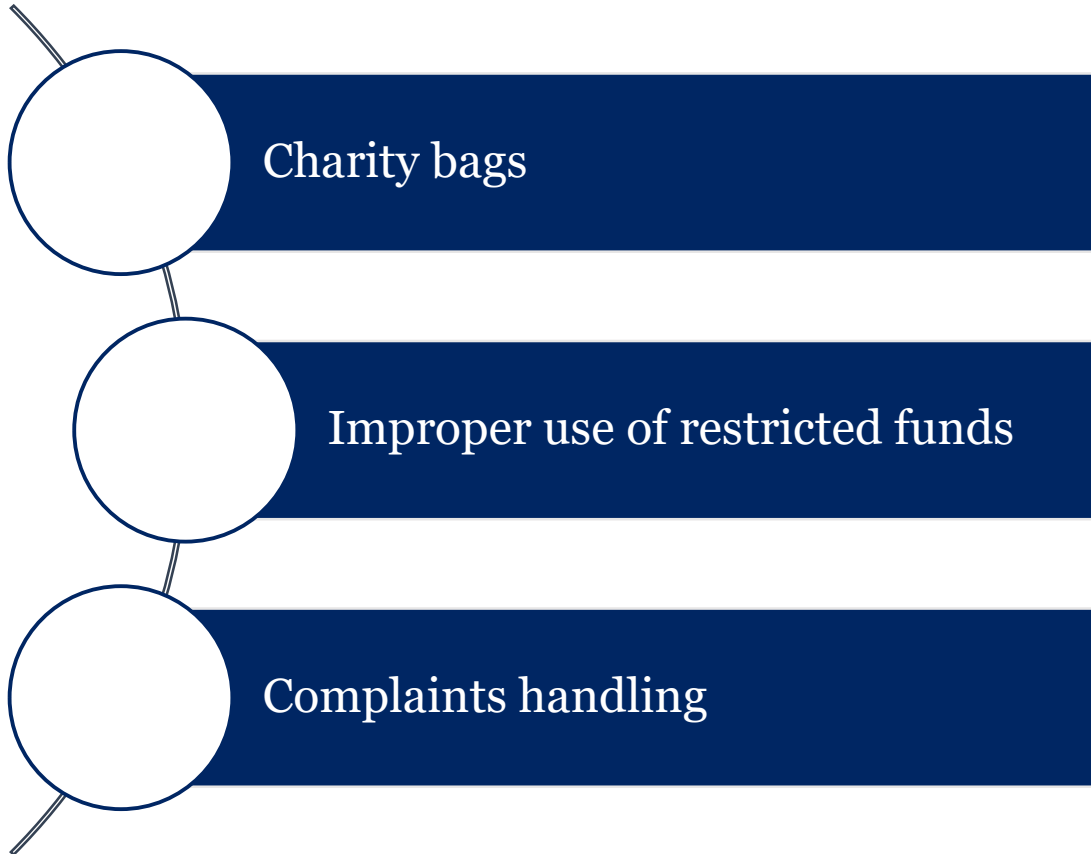
Self-reporting on the horizon



New guidance



Investigation reports



Self-reporting on the horizon

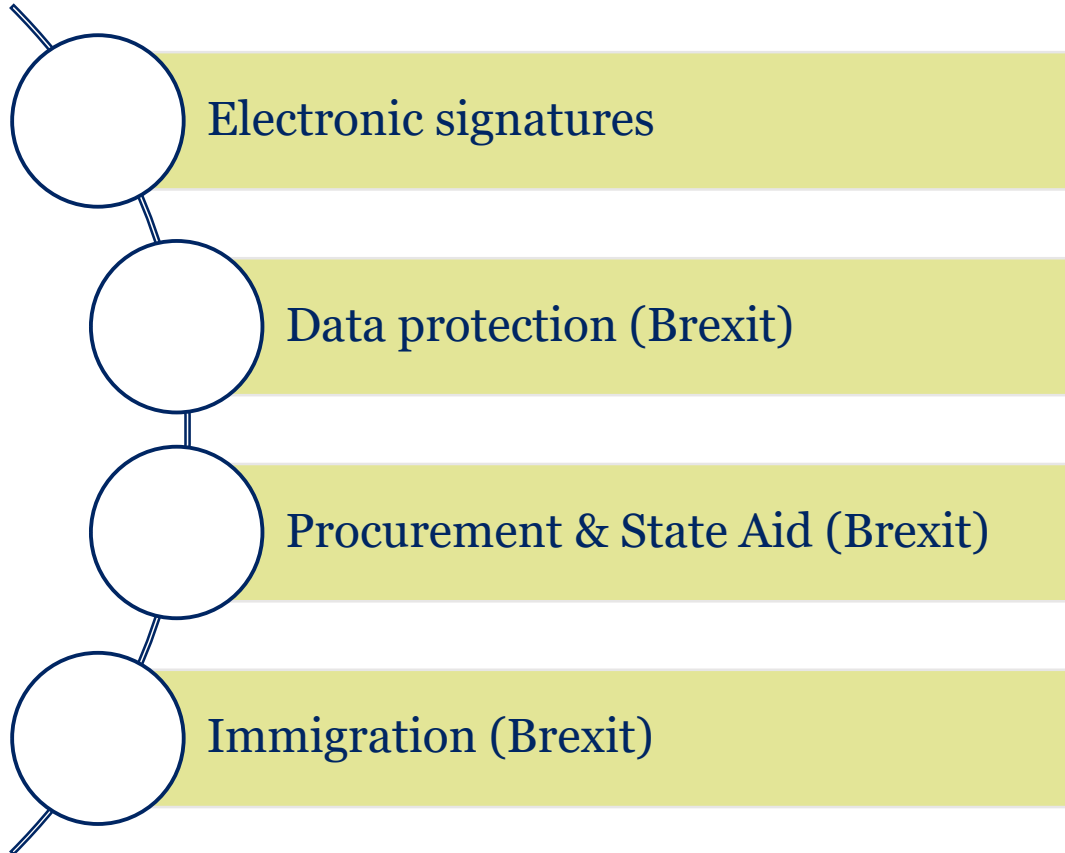
“Another way that regulators can find out important information from the organisations they regulate is through the self-reporting of incidents. At our Annual Event earlier this year, we received some questions relating to our self-reporting process, namely do we have one, and how should organisations do this?

The short answer to the first question is not yet, but we are working on it. Part of our programme of work over the next year is to develop a process for self-reporting. This will provide organisations with a clear and easily understandable pathway to follow when they identify that they have breached the Code of Fundraising Practice. We will be designing a set of criteria and guidance for the sector that will clearly set out our expectations for self-reporting and the circumstances in which this should happen.”

~ Catherine Orr, Head of Casework at the Fundraising Regulator

Other legal updates

Summary of other noteworthy legal updates



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CHARITY LAW ASSOCIATION

TWENTY SEVENTH ANNUAL CONFERENCE

Thursday, 7 October 2021

EDI PANEL DISCUSSION

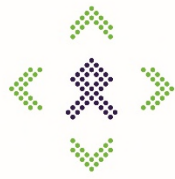
**Chair: Claris D'cruz
Wrigleys Solicitors**

**Lynda Thomas
CEO of Macmillan Cancer Support**

**Kamran Mallick
CEO of Disability Rights UK**

**Professor Iyiola Solanke
Chair in EU Law and Social Justice, Leeds School of Law
and Dean for EDI, University of Leeds**

**Sung-Hyui Park
Bates Wells**



CHARITY LAW ASSOCIATION

TWENTY SEVENTH ANNUAL CONFERENCE

Thursday, 7 October 2021

NORTHERN IRISH UPDATE

**Sarah Burrows
Edwards & Co.**

Review from Northern Ireland

Sarah Burrows

Partner, Charities & Social Enterprise Team

Edwards & Co. Solicitors

7 October 2021

Please note: The content of this presentation is for information purposes only and further advice should be sought from a suitably qualified professional advisor before any action is taken.

High Court Case

- 16 May 2019 Chancery Division High Court of Justice, Belfast
- 3 cases heard together...Madame Justice McBride
- **The Charity Commission cannot lawfully delegate its decision making functions to staff acting alone**
- **What decisions? – change to objects/consents/authorisations --- even registration of a charity ...**

Court of Appeal Case

- Appealed by Charity Commission for Northern Ireland
- February 2020 – Court of Appeal dismissed appeal
- **Rendered all orders and decisions made by staff unlawful**
 - including charity registration

Impact

- How the Charity Commission for Northern Ireland discharges its decision making functions
- How to deal with decisions taken by staff
- Impact on the sector



Charities Bill

- Executive Bill
- Sponsored by Minister for Communities
- Currently at Committee Stage
- Bill being taken forward in parallel with an independent review of charity regulation and the role of the regulator
- Royal Assent - Spring 2022

Charities Bill

[AS INTRODUCED]

LEGISLATIVE COMPETENCE

At Introduction the Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Charities Bill would be within the legislative competence of the Northern Ireland Assembly.”

Charities Bill aim

- Amendments to Charities Act (NI) 2008 with retrospective effect to make lawful many but not all previous decisions
- To make clear what decisions the Charity Commission for Northern Ireland staff are empowered to make going forward
- Introduce registration threshold

Charities Bill Summary

- The Bill has been drafted to make provision about the lawfulness of decisions taken or other things done by staff of the Charity Commission for Northern Ireland, and about exempting charities, by reference to conditions related to thresholds, from the duty to be registered in the Register of Charities.
- Bill will make approx. 7,000 decisions, orders and directions lawful – treating them as if always lawful
 - Charities register
 - Consent sought
- Non-delegation

CLA Working Party

- Submitted written representations
- Oral evidence presented by Prof Gareth Morgan
- Varying views of members of the working party

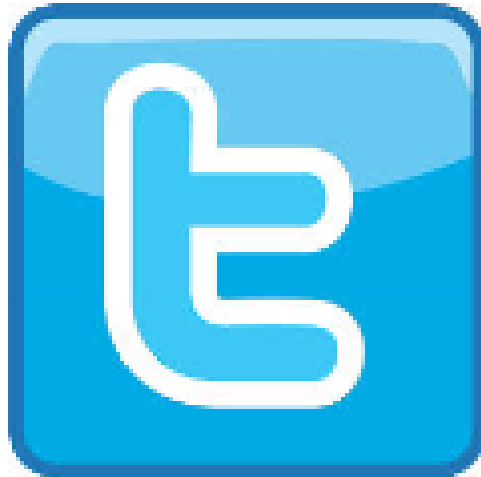


Independent Review of Charity Regulation in NI

- Panel appointed by Minister: Dr Oonagh Breen, Rev Lesley Carroll and Noel Lavery
- To consider various matters including:
 - whether every NI charity should be registered;
 - delivery of the objectives and statutory functions of CCNI;
 - is registration regime fit for purpose;
 - s.167 institutions (of interest to charities reg in E&W & Scotland and operating in NI)
 - CIOs
 - Co-operation with other regulators
- CLA took part in making a submission and in a stakeholder session online with other lawyers and professionals in April 2021
- **Report is due in autumn**

For more information

- **Sarah Burrows**
- 028 9032 1863
- Sarah.burrows@edwardsandcompany.co.uk
- www.edwardsandcompany.co.uk
- @seburrows7
- @EdwardsandCo_





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