

# Charity Law Association legal update: 22 May to 10 September 2021

by Practical Law Private Client

Jurisdiction: **England, Wales**

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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 22 May to 10 September 2021.

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

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

### Charities Bill 2021-22

The Charities Bill 2021-22 receiving its second reading in the House of Lords on 14 July 2021. The Bill is currently at Special Public Bill Committee stage in the House of Lords. The Committee will hear oral evidence and consider any proposed amendments.

#### Minister resists calls to reconsider rejected Law Commission recommendations

On 7 July 2021, the Charities Bill 2021-22 was considered by the second reading committee in the House of Lords. Peers were united in their support and welcome for the Bill.

Minister for Civil Society, Baroness Barran, resisted calls to reconsider two Law Commission recommendations rejected by the government. The first would make it possible for a charity to obtain authorisation from either the court of the Charity Commission (Commission) to pursue charity proceedings where the Commission faced an actual or apparent conflict of interests. While the second would remove the requirement for the Commission to obtain the Attorney General's consent before making a reference to the Charity Tribunal.

Baroness Barran promised that an implementation plan would be published before the Bill completed its passage through Parliament. She also committed the Department for Digital, Culture, Media and Sport to taking forward in 2022 regulations to expand the range of advisers qualified to advise charities on land transactions and the matters to be reported in such advice, as well as to review various financial thresholds in the Charities Act 2011, with a view to increasing them in line with inflation.

The next step is for the Bill to receive its second reading in the House of Lords on 14 July 2021.

Source:

- [Hansard, House of Lords debates: Charities Bill: Volume 813, 7 July 2021.](#)

#### Publication and first reading

On 26 May 2021, the Charities Bill 2021-22 was introduced to the House of Lords by Baroness Barran (Minister for Civil Society), and had its [first reading](#). The UK Parliament has published the [text](#) of the Bill and

[explanatory notes](#). Second reading of the Bill has not yet been scheduled.

The Bill will implement most of the recommendations made by the Law Commission in its 2017 report "Technical Issues in Charity Law". It aims to reduce unnecessary bureaucracy for charities in England and Wales, saving them time and money. It does so primarily by amending the Charities Act 2011 but also by amending other legislation such as the Universities and College Estates Act 1925 and the Trusts of Land and Appointment of Trustees Act 1996.

The Bill will:

- Give charities wider or additional powers and flexibility to amend their governing documents, decide on how they procure goods and services, and make "ex gratia" payments.
- Clarify when property can be applied *cy-près*, including the proceeds of failed fundraising appeals.
- Produce a clearer and less administratively burdensome legal framework for buying, selling, leasing and mortgaging charity land.
- Clarify and expand the statutory regime that applies to permanent endowment and introduce a power (with appropriate safeguards) for charities to borrow from their permanent endowment, as well as to make certain social investments using permanent endowment.
- Facilitate, where appropriate, charity mergers and incorporations.

It will also confer additional powers on the Charity Commission to authorise charities to pay an equitable allowance, require charities to change or stop using inappropriate names and to ratify the appointment or election of charity trustees where there is uncertainty concerning the validity of their appointment or election. Finally, certain powers of the Charity Tribunal will be clarified and improved.

The government announced its intention to propose the Bill in the Queen's Speech.

### COVID-19

For answers to frequently asked questions about the implications of the COVID-19 outbreak for charities, see [Practice note, COVID-19: private client FAQs: Charities](#).

#### Charity Commission updates meetings guidance for lifted restrictions in England and Wales

On 3 August 2021, the Charity Commission updated its [COVID-19 guidance](#) for the gradual easing of

lockdown restrictions in England and Wales. The regulator has sought to reassure charities that, during this time, it will continue to act proportionately in the public interest, while helping charity trustees to consider the wider or longer-term impact of their decisions on their charity.

On charity meetings, the guidance now says that, as restrictions ease, charities can gradually return to face-to-face meetings and hold any outstanding annual general meetings (AGMs) or other meetings. However, it warns of the ongoing impact that COVID-19 will have on charity events and that charity trustees need to consider how, and if, they can hold meetings. Charities without rules permitting meetings to be held online, by telephone or on a hybrid basis, or to be cancelled or postponed, are advised to update their governing document and to approve any previous decisions held contrary to their rules, as soon as possible.

However, where this is not possible, charity trustees should regularly consider the wider risks and implications of holding meetings remotely or postponing or cancelling meetings where this is not allowed by the charity's rules:

- In the short term as restrictions are lifted, the regulator will continue to take a proportionate approach where charity trustees decide to hold meetings on a remote or hybrid basis (where some people meet face-to-face and others join virtually) or to postpone or cancel an AGM or other required meeting, despite the lack of specific rules allowing for this in their charity's governing document.
- In reaching their decision, charity trustees are expected to be able to show that they considered all relevant facts and possible alternatives, could not reasonably have made prior changes to their governing document, and followed all other rules governing their charity's meetings.

The Commission has stressed to charity trustees the importance of recording their decisions, and the reasons for them, should they be called into question in the future. It has also reminded charity trustees that it may be able to give advice or authorise action that is not authorised by their charity's rules (see [Video, COVID-19: seeking Charity Commission permissions during the pandemic](#)).

In early July, the Commission updated this guidance for its current policy on granting annual return filing extensions (see [Legal update, COVID-19: Charity Commission sets out new approach to annual return filing extensions](#)).

### **New guidance advises cautious return to charity fundraising activities**

On 21 July 2021, the Fundraising Regulator and Chartered Institute of Fundraising [published](#) new [guidance](#) to support charities and their fundraising partners to fundraise safely and responsibly, following the end of lockdown restrictions in England and relaxation of restrictions in Wales (see [Legal updates, COVID-19: Regulations removing lockdown restrictions in England made \(business implications\)](#) and [COVID-19: Wales to complete move to Alert Level 1 on 17 July 2021](#)).

The guidance advises all charitable fundraising organisations to maintain a cautious approach to their fundraising activities, bearing in mind that the virus has not gone away. Organisations may choose to adopt social distancing and protective ways of working, as appropriate to the activity they plan to carry out and for the management of risk.

The guidance sets out five key considerations to aid good decision-making by fundraising organisations. Central to this is carrying out and following thorough risk assessments and putting in place steps identified to protect the public, fundraisers and volunteers. They also include keeping up to date with, and following, government guidance, and any continuing or new restrictions (including regional or local ones), considering the public mood and likely feelings and preferences of supporters, and ensuring decisions made to carry out a fundraising activity are thoroughly considered, carefully evaluated, and regularly reviewed. It re-emphasises the need for charity trustees to have proper oversight of fundraising decisions, as they have ultimate responsibility for their charity's fundraising.

### **Guidance on volunteering in England amended to reflect Step 4 of government plan**

On 19 July 2021, the Department for Digital, Culture, Media and Sport (DCMS) further updated its [guidance](#) for voluntary organisations and groups in England on how to safely and effectively involve volunteers in their work during the COVID-19 pandemic. This now reflects the relaxation of rules in Step 4 of the government's road map for managing the pandemic. The guidance explains that, even though many COVID-19 restrictions have been lifted, organisations and groups will still need to make judgements to manage health risks.

## Charity Commission sets out new approach to annual return filing extensions

On 2 July 2021, the Charity Commission updated its [COVID-19 guidance for the charity sector](#). The advice on postponing or cancelling annual general meetings (AGM) and other meetings now reflects the Commission's new approach to filing extensions where a charity has been unable, due to COVID-19, to hold an AGM to finalise their annual return, report and accounts:

- All charities that were granted an extension on or before 30 June 2021 must now meet their filing commitments by 30 September 2021.
- In the period 1 July to 30 September 2021, a charity that is unable to meet its filing obligations for a COVID-19 related reason can apply for a new extension. However, the regulator will only allow a fixed 3-month extension running from the date the application was made.

Also, the section on insolvency help for charitable companies and charitable incorporated organisations (CIOs) has been updated for the further extension until 30 September 2021 of the temporary suspension of the use of statutory demands and restrictions on winding up petitions. The section on charity meetings now refers to the current restrictions in place in England and Wales but, otherwise, the advice is unchanged.

## Guidance on volunteering in England during pandemic further updated

On 15 June 2021, the Department for Digital, Culture, Media and Sport (DCMS) further updated its [guidance](#) for voluntary organisations and groups in England on how to safely and effectively involve volunteers in their work during the COVID-19 pandemic. This now:

- Warns voluntary organisations and groups that the spread of new COVID-19 variant Delta in some parts of England means there may be additional advice for their area.
- Includes a new section on contact tracing records. This says that voluntary organisations and groups should keep a record of all the volunteers who come on to their premises (including shift times on a given day and contact details). It also reminds voluntary organisations and groups that certain venues must have a system in place to request and record contact details of their customers, visitors, staff and volunteers. These records must be kept for at least 21 days and provided to NHS Test and Trace on request.
- Says that individuals can leave the UK to volunteer, but advises travellers to check the government's [international travel guidance](#), [foreign travel advice](#), [guidance on travelling abroad during the pandemic](#), list of [jobs that qualify for travel exemptions](#), as well as

the [red, amber and green list rules](#) for the measures to be followed on returning to England.

## Corporate Insolvency and Governance Act 2020

### Restrictions on statutory demands to be lifted but new measures introduced for winding-up petitions and restrictions to continue for smaller debts and commercial tenants until 31 March 2022

On 9 September 2021, the government announced that the restrictions on statutory demands and winding-up petitions under the Corporate Insolvency and Governance Act 2020 (CIGA 2020) that expire on 30 September 2021 would not be extended but would be replaced with more limited restrictions for winding-up petitions presented between 1 October 2021 and 31 March 2022.

The announcement has now been confirmed by the publication of the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 (*SI 2021/1029*). The revised Schedule 10 to CIGA 2020 effected by these Regulations (the new Schedule 10) lifts the current restrictions on statutory demands but imposes new requirements for winding-up petitions. The restrictions on petitions where the debt owed is under £10,000 or is for commercial rent remain.

The new Schedule 10 sets out conditions that must be met for presenting a winding-up petition. The principal consequences of these are that during the relevant period, which will expire on 31 March 2022:

- A creditor may not present a winding-up petition in respect of commercial rent that is unpaid because of a financial effect of coronavirus. This provision supports the extended moratorium on forfeiture for commercial tenants.
- A creditor may not present a winding-up petition if it is for a debt or debts totalling less than £10,000.
- A creditor may not present a winding-up petition unless written notice (a Schedule 10 Notice) has been delivered to the debtor seeking the company's proposals for payment of the debt and the company has not made a proposal that is to the creditor's satisfaction within 21 days. A creditor may, however, apply to court for an order that they do not need to deliver a Schedule 10 Notice or give the debtor 21 days to make a satisfactory proposal.
- A creditor will again be able to rely on non-payment of a statutory demand to evidence a debtor's inability to pay their debts provided the other conditions are met.

Sources:

- The *Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021 (SI 2021/1029)*.
- *Explanatory memorandum*.

### Further extension of restrictions on winding-up petitions and orders to 30 September 2021

On 16 June 2021, the government announced a further extension to the restrictions on statutory demands and petitions under the Corporate Insolvency and Governance Act 2020 that had been due to expire on 30 June 2021. (See [Legal update, COVID-19: government extends measures to protect companies from creditor enforcement to 30 September 2021](#).) The announcement has now been confirmed by the publication of the Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No 2) Regulations 2021 (SI 2021/718). These provide that the restrictions on presenting winding-up petitions and on winding-up orders under Schedule 10 to the Corporate Insolvency and Governance Act 2020 that had been due to expire on 30 June 2021 will now expire on 30 September 2021.

The relaxation in conditions for a company to enter a Part A1 moratorium (previously extended in March) continues until 30 September 2021.

There is no further extension to the suspension of wrongful trading liability or to the exemption for small suppliers from the restrictions on terminating supply contracts as a result of the customer's insolvency, both of which will therefore expire on 30 June 2021.

The extension of these restrictions was announced in tandem with a package of further commercial tenant protections (see [Legal update, COVID-19: government announces new rules to support commercial tenants](#)).

Sources:

- The *Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) (No 2) Regulations 2021 (SI 2021/718)*.
- *Explanatory memorandum*.

## Charity Commission

### Guidance and policy

See also, [COVID-19](#).

### Charity Commission virtual annual public meeting: 30 September 2021

The Charity Commission will hold its *next annual public meeting* at 2pm on Thursday 30 September 2021. It will be broadcast live on the internet.

The Commission's Chief Executive, Dr Helen Stephenson, will deliver a keynote address reporting on the Commission's delivery of support and services to charities, and outlining its priorities and plans as the country recovers from the COVID-19 pandemic.

The Commission's Chair, Ian Karet, will host a Q&A session, with the Chief Executive and her executive team taking questions from the public (details of how to submit questions will be sent to those registered for the event).

### Charity Commission publishes responses to responsible investment consultation

On 18 August 2021, the Charity Commission published a [summary of responses](#) to its consultation on draft revised guidance for charity trustees on adopting a responsible approach to investing charity funds.

The regulator received 211 responses, most of which were from charities. Overall, the draft guidance update received a positive response. High survey ratings, and many positive written comments, were received from charities about the clarity of the draft guidance update and its likely contribution to improved charity trustee confidence. However, responses from investment and legal advisers were less positive.

Respondents raised concerns about:

- The use of the term "responsible investment". Investor charities and advisers said that the Commission's proposed use of the term was too narrow, as it only referenced taking a charity's purposes into account when making investment decisions. Whereas they understood the term more broadly to include taking into account environmental, social and governance (ESG) factors when making investments.

Respondents said that, if the definition was adjusted to include or reference ESG factors, this would reassure guidance users that the Commission accepted that it was valid for all charity investors, particularly long-term investors, to factor for systemic risks and that to do so was financially material in its own right.

- A perceived implication in the draft guidance update that a responsible investment approach would generate lower returns.

During the consultation two charities were granted permission to seek a High Court declaration as to whether they could adopt a responsible investment policy. As the court's decision may affect the final guidance, the Commission has confirmed that it will not publish it until the court has given its judgement (expected in 2022).

### Charity Commission refreshes guidance for faith charities

On 28 July 2021, the Charity Commission published guidance "[Managing faith charities as trustees](#)". This is



a re-write and refresh of its previous guidance, "Faith in good governance".

It includes helpful guidance for charity trustees of faith charities on issues such as, checking if a faith organisation is required to register with the Commission, religious or spiritual leaders as charity trustees, safeguarding, managing finances (including sending money overseas) and inviting external speakers.

This guidance is clearer and more concise than the previous version. It follows a recent government announcement that it plans to work with the Commission to phase in compulsory registration for exempted church charities over the next ten years.

### **Regulator calls for charities to be excluded from audit and corporate governance reform proposals**

On 26 July 2021, the Charity Commission published its [response](#) to the Department for Business, Energy, and Industrial Strategy's (BEIS) March 2021 consultation on restoring trust and confidence in audit and corporate governance.

BEIS has proposed expanding the definition of "public interest entity" (PIE) so that large businesses of public importance are subject to regulation regardless of whether they are admitted to trading on a regulated market. This will mean that certain large private companies, including larger charitable companies, will come within the definition of a PIE.

The Commission has recommended that charities be excluded from the definition of PIEs and associated corporate reforms. Its position is that the proposed regime has been designed with the interests of shareholders and for-profit commerce in mind, and that such imperatives simply do not apply to the charity sector. Its view is that guidance and policy currently in place for the charity sector already covers much of the intended reforms.

The Commission has therefore invited BEIS to work with it, the charity sector, and stakeholders to establish the extent to which existing mechanisms in place for the charity sector could be enhanced to meet the desired outcome of improved corporate governance and oversight. Charity practitioners will wish to follow the outcome of this consultation (which has now closed).

### **Charity Commission confirms electronic sign off acceptable on specified financial reports**

On 14 July 2020, the Charity Commission updated its guidance: [Charity reporting and accounting: the essentials November 2016 \(CC15d\)](#) to include an additional paragraph (at 3.2) on the use of electronic signatures on balance sheets, and trustees' annual and independent examiners' reports.

The guidance states that, unless a charity's governing document specifically requires otherwise, signatures on these financial reports do not have to be in wet ink or handwritten. This enables a typed signature or an electronic version of a handwritten signature (such as a scanned version of a handwritten signature or a digital signature) to be used.

This applies to both the version of the report that the trustee, or independent examiner signs and keeps, and the copy that is filed with the regulator.

### **Small religious charities: Charity Commission and DCMS planning phased registration over next ten years**

In an [answer](#) to a written question in the House of Lords on 12 July 2021, Baroness Barran, the Parliamentary Under Secretary for the Department for Digital, Culture, Media and Sport (DCMS) said that the DCMS will work with the Charity Commission and representatives from exempted church charities to develop a plan for phasing in compulsory registration over the next ten years.

The [Charities \(Exception from Registration\) \(Amendment\) Regulations 2021 \(SI 2021/55\)](#), which came into force on 31 March 2021, extended the temporary exception from compulsory registration on the Charity Commission's register of charities up to 31 March 2031, and this temporary exception applies to churches and chapels belonging to some Christian denominations that have a gross annual income of £100,000 or less ([regulation 4, 1996 Regulations](#)). For further detail, see [Charity Commission: Exempted charities](#).

The exception was originally due to expire on 1 March 2001 but has been extended by successive statutory instruments.

Our understanding is that one of the problems with bringing the temporary exception to an end has always been that the regulator does not have capacity to deal with the additional workload involved in registering thousands of charities in this category within a short time frame. A phased-in approach should help to prevent capacity overload.

### **Regulator urges international aid charities to do more to safeguard beneficiaries**

On 24 June 2021, the Charity Commission [issued](#) a formal [regulatory alert](#) to over 5,000 international aid charities highlighting ways in which they could improve their safeguarding practices. These include making it easier for recipients of aid to report allegations of misconduct and abuse, and taking a "survivor-centred" approach to handling incidents of harm.

The measures, which reflect existing best practice, address weaknesses in safeguarding practices of

international aid charities identified from recent serious incident reports submitted to the Commission and the International Development Committee's [report on progress on tackling the sexual exploitation and abuse of aid beneficiaries](#).

The alert recommends that charity trustees consider taking the following steps:

- Ensure that their charity's policies, communications, and ongoing performance management help to maintain appropriate behaviours by staff and workers to each other and the beneficiaries they serve.
- Join the inter-agency [Misconduct Disclosure Scheme](#) to help protect against individuals who pose a risk.
- Explore whether gender and diversity imbalances in their charity's trustee board and senior management pose potential safeguarding risks which require proactive management.
- Use Bond's [sector-led safeguarding culture tool](#) to help develop and model a positive safeguarding culture in their charity.
- Identify any lessons that their charity might learn from the [summary of findings](#) from safeguarding-specific central assurance assessments carried out on charities in 2018.

The Commission has recognised that significant progress has been made since 2018, when the international aid sector committed to taking action to improve safeguarding practices. The Commission ended its statutory supervision of Oxfam GB as the charity had significantly strengthened its approach to safeguarding. However, the regulator has warned that such positive improvements risk being undermined by continued weaknesses and that further work is required to deliver transformative change.

Earlier this year, a new programme was launched to bring perpetrators of sexual abuse, exploitation or sexual harassment in the aid sector to justice and provide support for survivors.

### Charity Commission further improves online register of charities

On 24 May 2021, the Charity Commission published a [blog](#) on the further improvements it has made to the online register of charities, since it launched a new version of the register in September 2020.

These include:

- Clearly identifying where the Commission has agreed to grant a charity affected by the COVID-19 pandemic an extension to file its annual reports (see [Practice note, COVID-19: private client FAQs: What if a registered charity cannot comply with obligations to file its annual return, accounts and reports with the Charity Commission?](#)).

- Showing the financial history of charities that have been removed from the register.
- Providing a more detailed breakdown of financial history and five years' assets and liabilities history for charities in new interactive charts.
- Linking charities where a funds transfer has occurred, so users can click through to the transferring or receiving charity. Longer term, the Commission will consider whether and how it can display more merger information and improve the interaction with the register of charity mergers.

The regulator has also introduced a new "quick search" facility that is accessible from every page, improved the search function and included employee benefits as a search filter. The data sharing portal has been redesigned to make it easier to download and analyse data published on the register.

The Commission has invited feedback on these changes, as well as any ideas on how it might further improve the register.

## Inquiries and regulatory case work

### Agreement with fundraising agency not in animal charity's best interests

On 2 September 2021, the Charity Commission [published an inquiry report](#) into the Alternative Animal Sanctuary. Having found serious failings in governance and financial management, the Commission concluded that the underlying issues were so significant that the charity was no longer viable. The charity has been wound up and two of its trustees disqualified.

Most strikingly, the Commission found that the terms of an agreement with a direct mail agency were not in the charity's best interests. While the total income generated by the arrangement over a 12-year period was £10.6 million, only £1.8 million (18%) was received by the charity. 82% of the funds raised (£8.8 million) was paid to the agency in costs and fees.

The trustees had failed to take any formal legal or accountancy advice on the terms of the initial agreement or to undertake any due diligence in respect of the direct mail agency. They had not considered the range of reasonable alternatives available at the time the agreement was made, or when it was extended, nor had they adequately considered the risks, issues and potential liabilities arising from its terms. The agreement did not comply with the professional fundraiser rules under the Charities Act 1992 and the lack of information available to the public at the point donations were solicited, particularly in respect of the arrangements with the agency and the costs involved, risked damaging the charity's reputation.

The inquiry also found that:

- The chair of trustees had run the sanctuary on a day-to-day basis and had full autonomy over the charity's bank account, with no oversight by the other trustees.
- There had been a complete lack of basic financial controls and separation between the personal finances of the chair and those of the charity, exposing the charity's funds to undue risk and resulting in significant losses to the charity.
- The charity had failed to manage conflicts of interest appropriately and did not have a conflicts of interest policy in place, despite its trustee board including three members of the same family.
- The trustees had not kept adequate financial records and repeatedly failed to comply with their legal accounting responsibilities.

The inquiry was opened because of concerns reported to the Commission by the charity's former auditors.

### Regulatory action secures land for charity that had ceased to operate

On 26 May 2021, the Charity Commission [published a report](#) on its inquiry into National Equine Training Trust (NETT). The Commission found that former trustees had mismanaged NETT by failing to dispose of land properly after the charity had ceased to operate, thereby risking loss of a significant asset.

NETT was an unincorporated charity that the Commission had removed from the register of charities in 2013 on the grounds that it was no longer operating, as it had failed to submit accounts to the regulator. During the inquiry, the Commission's attempts to engage with NETT's trustees were unsuccessful and it found that there had been no transactions in or out of the charity's bank account since January 2015.

In 2018, an adverse possession claim was made in respect of land still vested (and registered at the Land Registry) in the names of trustees of the charity. The Commission became aware of the claim when it was named as a respondent in the proceedings. As NETT's trustees had not responded to the proceedings, there was a significant risk that the land could have been lost to charity.

The Commission removed two of NETT's three inactive trustees from office, as they lived outside England and Wales and could not be found. The other trustee had died. The regulator then appointed new trustees in their place, reinstated NETT to the register of charities and vested the land in the Official Custodian for Charities (OC) under section 76(3)(c) of the Charities Act 2011.

The Commission then intervened in the adverse possession claim on the OC's behalf. The claim was struck out, securing a valuable piece of land for the charity.

The report reminds charity trustees of their duty to ensure that a charity that has become inactive is wound up in accordance with its governing document and its property disposed of in accordance with charity law. It also illustrates the potential for causing significant loss to charity if such formalities are not dealt with and how an unincorporated charity only ceases to exist when there is no longer any property held on its charitable trusts, irrespective of whether it remains on the register of charities.

### Royal charities did not breach charity law in funding sustainable travel initiative

The Charity Commission has [found](#) that the MWX Foundation (MWXF) (a registered charity established by the Duke and Duchess of Sussex, formerly known as [Sussex Royal: The Foundation](#)) complied with charity law in transferring funds to Travalyst, a sustainable tourism initiative launched by the Duke of Sussex.

In 2019, MWXF received an unrestricted grant of £145,000 as start-up funding from the Royal Foundation of the Duke and Duchess of Cambridge, a charity formerly known as the Royal Foundation of the Duke and Duchess of Cambridge and the Duke and Duchess of Sussex (Royal Foundation).

MWXF also received from the Royal Foundation, and transferred to Travalyst, a further £151,855 to deliver Travalyst's sustainable travel programme. In July 2020, the charity trustees decided to wind up MWXF. The Commission found that:

- The transfer of funds to MWXF was in accordance with the Royal Foundation's governing document and permitted by charity law.
- The transfer of funds by MWXF to Travalyst was also lawful.
- Travalyst could receive charitable funds for the promotion of sustainable travel only, which is a charitable activity in law. (The Commission has provided MWXF with regulatory advice on how to ensure that Travalyst applies these funds for exclusively charitable purposes.)
- There was no evidence to suggest that any conflicts of interest between MWXF and Travalyst were managed inappropriately.

The regulator also found that, in the 12 months in which MWXF operated, almost half of its funds were spent on legal and administrative costs. Considering the unexpected events and unique circumstances surrounding the charity, this was not unreasonable. However, the Commission has criticised the charity trustees for inadequately documenting their decisions, limiting their ability to justify them, and contrary to best practice and regulatory guidance.



The Commission has also highlighted how a substantial proportion of funds were spent on establishing and winding up a charity that was active for a relatively short period of time. It has counselled those considering setting up a charity to think about whether a new charity is the best and most efficient means of achieving their intended aims, ensuring as far as possible that initial costs are offset by the charity's longer-term impact.

A parallel investigation into the Royal Foundation's decision to transfer funds to MWXF found no issues of concern.

### **Charity intentionally abused by charity trustees for criminal purposes**

On 20 May 2021, the Charity Commission *published* a *report* on its inquiry into Afghan Poverty Relief. The Commission found that mismanagement of the charity by all four of its trustees contributed to, or facilitated, its abuse for criminal purposes by two of their number, resulting in significant financial loss to the charity.

In May 2014, one charity trustee (Trustee A) was sentenced to five years imprisonment for theft, while his wife (Trustee B) was sentenced to three years imprisonment for both theft and fraud (having been found guilty of making false or misleading representations to the Commission in respect of the charity's annual return submissions). Trustee A and B had engaged in a sophisticated scheme to steal cash from the charity by giving false receipts pretending that charitable funds had been sent to Afghanistan for the relief of poverty. As a result of their convictions, Trustee A and B were automatically disqualified from charity trusteeship under section 178 of the Charities Act 2011.

Confiscation orders were made against Trustees A and B for £532,925.53, resulting in payments of £457,134.99 being made to the charity. The Commission appointed an interim manager to the charity, who assessed that it was no longer viable. All the charity's remaining assets have been transferred to a non-governmental organisation to be applied under a memorandum of understanding that supports the charity's purposes.

While not complicit in Trustee A and B's crimes, the Commission concluded that the charity's other two trustees had breached their fiduciary and statutory duties. By deferring to Trustees A and B, they had failed in their joint and several responsibility to protect the charity's funds. The report reminds charity trustees that their duties are active and, where tasks and responsibilities are delegated to co-trustees, they must hold them to account.

## **Cases**

### **Court of Appeal**

#### **Local authorities must focus on charity's overall activities and purposes when assessing business rates relief for multiple premises (Court of Appeal)**

The Court of Appeal has considered the proper approach to determining whether a charity operating from multiple premises within different local authorities was entitled to mandatory relief from non-domestic rates under section 43(6)(a) of the Local Government Finance Act 1988 (LGFA 1988).

The healthcare charity, Nuffield Health, ran hospitals, medical centres and gyms. Its primary method of fundraising was to charge fees for its products and services. The local authority refused mandatory rate relief on one of the charity's gyms on the basis that it was not being used wholly or mainly for charitable purposes within section 43(6)(a) of LGFA 1988. It argued that the existence of facilities such as a members-only car park, creche, spa and refreshment area meant that the premises were being used for fundraising through membership fees. The local authority appealed against the High Court's decision that rates relief should have been given.

The Court of Appeal held that:

- When assessing "public benefit" for the purposes of section 43(6)(a) of LGFA 1988, the focus was on the charity's overall activities and purposes, not on the activities at its individual sites. The section had a broad meaning that treated the charitable purpose, and therefore the public benefit requirement, as being subsumed in the status of the charity ratepayer.
- The relevant question was whether the charity was using the particular hereditament for its charitable purposes, not whether the activity carried on at that particular hereditament would qualify as a charitable activity in its own right. Local authorities therefore had only to enquire whether the charity was using the relevant premises for its specified charitable purposes; they did not need to satisfy themselves that a public benefit was being delivered at those premises. The High Court had correctly decided this issue.

However, had it been necessary (in accordance with Richards LJ's dissenting opinion) to determine whether the gym was delivering public benefit, the High Court had erred in fact and in law in its view that the requirement was satisfied. No reasoning was given for the judge's finding that the membership fees were set at a level that did not exclude those of modest

means. Also, the services available to non-members were extremely limited and insufficient to satisfy the requirement for charitable use.

Case:

- *Nuffield Health v London Borough of Merton [2021] EWCA Civ 826 (28 May 2021)* (Richards, Jackson and Nugee LJ).

## High Court

### Registered societies: effect of conversion from company (High Court)

The High Court has considered, in a decision on an arbitrator's jurisdiction, whether a company which had converted into a registered society under the Co-Operative and Community Benefit Societies Act 2014 (CCBS 2014) thereby became a different legal entity.

M had granted R Ltd a lease. During the term, R Ltd converted into a registered society by special resolution under section 115 of CCBS 2014 and was registered as a registered society. A dispute arose, and M asserted that on conversion R Ltd had become a different legal entity and, without an express assignment, R Soc was not entitled to exercise rights granted to R Ltd under the lease.

The court held that R Soc was the same legal person who entered into the lease and was still a party to the lease. Its reasons included:

- M had been unable explain how a converting company was able to transfer its assets to a registered society. The problem was that, when a converting company was still able to do so, the registered society did not yet exist. The converting company ceased to be a registered company at the same moment that the registered society was registered (*section 115(9), (10), CCBS 2014*). If the company ceased to exist while owning assets, they would pass to the Crown as *bona vacantia*, which cannot have been Parliament's intention. It was easier to believe that it was simply a change of status, of the legal regime under which an existing legal person was governed. It was more akin to the change of status under the Companies Act 2006, where, by re-registration, a private company becomes public, or a limited company becomes unlimited, or vice versa. There was no statutory provision in such cases for the assignment of rights and liabilities: the legal regime changed, but the person remained the same.
- It followed that when a limited company converted to a registered society, or vice versa, the assets and liabilities of the entity before the process continued to attach to the entity when the process ended.
- *Re London Housing Society Ltd's Trust Deeds [1940] Ch 777*, in which it was held that a registered society that had converted into a limited company under the Industrial and Provident Societies Act 1893 was "the same thing", supported that conclusion.

Case:

- *Mount Wellington Mine Ltd v Renewable Energy Co-operative Ltd [2021] EWHC 1486 (7 June 2021)* (HHJ Paul Matthews).

## Fundraising

### Fundraising Regulator issues new guidance on four key fundraising values

On 28 June 2021, the Fundraising Regulator (FR) published a *blog* announcing that it had issued new guidance *for fundraisers* and *for the public* on the four key values that underpin the standards set out in the Code of Fundraising Practice.

These values (open, honest, respectful and legal) underpin all methods of fundraising and are designed to make sure that fundraisers work in a way that protects public confidence in charitable fundraising.

The new guidance for fundraisers explains, with helpful examples, that:

- Fundraising openly means being clear with the public about fundraising processes and being willing to explain, where appropriate, if asked for more information.
- Fundraising honestly means acting with integrity and not misleading the public about the cause or the way in which a donation will be used.
- Fundraising respectfully means demonstrating respect whenever contact is made with any member of the public.
- Fundraising legally means that all fundraising must meet the requirements of the law. The guidance recognises that fundraising law is complex and comes from many sources, the Code is not a legal handbook and fundraisers are responsible for obtaining the advice they need to meet legal requirements.

The guidance for the public explains: the different types of fundraisers (charities, volunteers, fundraising agencies and commercial partners), how fundraising is regulated, the standards members of the public should expect when asked to donate and what to do if they have a question or query about fundraising.

## Charity tax and rates relief

### Autumn 2021 Budget date announced as 27 October 2021

On 7 September 2021, HM Treasury published a *news story* stating that the Chancellor had launched a spending review which will conclude on 27 October 2021 alongside an Autumn Budget.

## Finance Bill 2021: Royal Assent

On 10 June 2021, the Finance Bill 2021 received Royal Assent and became the Finance Act 2021.

Section 20 of the Act extends the social investment tax relief scheme for a further two years to 6 April 2023.

Sources:

- [UK Parliament: Lords Hansard: Royal Assent](#).
- [UK Parliament: Finance Act 2021](#).

## Business rates: consultation on proposed three-yearly revaluations (England)

The government is consulting on more frequent revaluations for business rates, proposing that they take place every three years (instead of every five years, as at present). The consultation closed on 24 August 2021.

The proposals aim to make the business rates system fairer and more streamlined by providing more accurate valuations, increasing transparency regarding calculations and producing valuations that more closely reflect the economy's performance.

This is a standalone consultation, forming part of the government's fundamental review of the business rates system in England. The government's final report on the fundamental review is expected in autumn 2021.

The Valuation Office Agency (VOA) usually reviews rateable values every five years, with the next revaluation postponed to 2023. As the changes would compress the VOA's workload into a three-year period, the consultation sets out various proposals for improving valuation accuracy. This should reduce the need for challenges. The proposals include:

- A new duty to notify the VOA of changes to the occupier and property characteristics (for example, structural alterations, demolition, conversion, division or merger, or a change of use). Ratepayers would also file an online annual confirmation return, confirming the data held for the property is correct. Notifications and annual returns would be submitted through an online portal.
- The mandatory provision of rent and lease information following completion of or changes to the lease. Other information, such as trade and accounts information, would also be collected in the annual return.
- Reforming the appeals system, for example, by introducing a three-month window to challenge the compiled list valuation and enabling the VOA to deal with challenges on similar properties as a batch.

The consultation also discusses the possibility of annual revaluations. While this remains under consideration

for the longer-term, the government does not propose introducing annual revaluations at this stage.

Source:

- [HM Treasury: Consultation: more frequent revaluations: Fundamental Review of Business Rates \(29 June 2021\)](#).

## Other items of interest

### Trust Registration Service: TRS open for non-taxable trust registrations from 1 September 2021 and registration deadline extended to 1 September 2022

HMRC has announced to a stakeholder group that the Trust Registration Service (TRS) is now open for non-taxable trust registrations with effect from 1 September 2021.

The Fifth Money Laundering Directive (MLD5) significantly expanded the scope of the TRS registration requirements because it no longer limits registration obligations to trusts that pay UK tax. Therefore, all express trusts need to register, unless they are one of the types of trust that is specifically excluded. Originally, these trusts (as well as new taxable trusts that would have been required to register with the previous system) were required to register by 10 March 2022 under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) (MLR 2017). However, due to the delay in opening the TRS to non-taxable trusts, HMRC has now confirmed that the registration deadline will be extended to 1 September 2022 and the relevant provisions of MLR 2017 will be amended accordingly. It also announced that the 30-day deadline to register a new trust would be extended to 90 days.

There will also be two further amendments to MLR 2017 to clarify that:

- All life insurance policies held in trust, including those that are not part of a wider life policy, are excluded from registration.
- Trusts required in order to open a bank account for a child are excluded from registration.

Sources:

- [HMRC: Register a trust as an agent \(updated 1 September 2021\)](#).
- [HMRC: Register a trust as a trustee \(updated 1 September 2021\)](#).
- [HMRC: Manage your trust's details \(updated 1 September 2021\)](#).
- [HMRC Trusts and Estates Newsletter: September 2021](#).
- [ICAEW: Trust Registration Service opens to all non-taxable trusts](#).

## Transgender charity fined for failing to keep personal data held on an internet-based email group secure

On 8 July 2021, the Information Commissioner's Office (ICO) *announced* that it had issued Mermaids with a *fine* for £25,000 for failing to implement appropriate technical and organisational measures to keep personal data held on an internet-based email group secure, in contravention of Articles 5(1)(f), 32(1) and 32(2) of the General Data Protection Regulation ((EU) 2016/679) (GDPR). Mermaids is a charity that supports transgender and gender-diverse children and their families.

The ICO found that:

- Mermaids had failed to apply an appropriate level of security to the email group, which resulted in 780 pages of confidential emails containing personal data relating to 550 individuals (including some relating to children and special category personal data) being searchable and viewable online for almost three years by third parties.
- Mermaids should have applied restricted access to its email group and could have considered pseudonymisation or encryption to add an extra layer of protection to the personal data it held. Also, it had failed to close down the group correctly when it was no longer in use, leaving it accessible albeit dormant.

While the ICO did not find the contraventions to be deliberate, it did find that the charity had a negligent approach towards data protection. Mermaids' data protection policies were inadequate, there was a lack of adequate training and, following the introduction of the GDPR on 25 May 2018, data protection policies had not been updated. Safeguards should have been in place to protect the young or vulnerable.

In assessing the size of the fine, the ICO considered mitigating factors, including that Mermaids had acted promptly when alerted to the breach and had co-operated fully with the investigation. Mermaids has since made significant improvements to its data protection practices. The charity made a serious incident report about the breach to the Charity Commission.

This is a timely reminder to all charities of their continuing responsibilities when processing personal data about individuals. It also illustrates the potential financial and reputational consequences of data protection breaches. As ICO's Director of Investigations said:

"The very nature of Mermaids' work should have compelled the charity to impose stringent safeguards to protect the often vulnerable people it works with. Its failure to do so subjected the very people it was trying to help to potential damage and distress and possible prejudice, harassment or abuse."

## Practical Law's resources for charity practitioners and charities

Our resources for charities and charity practitioners can be accessed from a dedicated webpage, *Practical Law for charity lawyers*.

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

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

All of our charities law and practice resources can also be found under the *Charities* topic in the *Private Client* practice area page.

### Charities updates

All of the developments described above have been covered, usually in greater detail, in our *legal updates*.

### Weekly updates

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

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

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

### New and updated resources for charity practitioners

#### What is a trust?: new practice note

We have published a new resource, *Practice note, What is a trust?*. The note is designed as an introduction for those who are not familiar with trusts and how they are used. It explains the parties involved in a trust, how trusts differ from other types of legal relationship, and their uses in private and commercial contexts.

The note will be helpful for those wanting an overview of the essential elements of a trust.

For signposting to all our resources on trusts, see [Trusts toolkit](#).

### Accounting and reporting by charities: new quick reference tables

We have published a new [Checklist, Accounting and reporting by charities: tables](#), written in collaboration with [Kathryn Cearn OBE](#), an independent consultant specialising in financial reporting, audit and governance.

These tables summarise the key accounting and reporting requirements for charitable companies, charitable incorporated organisations (CIOs), charitable trusts and charitable unincorporated associations, being the legal structures most commonly used to form a charity in England and Wales.

This checklist is designed to be used in conjunction with our [Practice note, Accounting and reporting by charities: overview](#).

For further guidance on charity accounting requirements, see [Practice note, Charity accounting standards](#). For all Practical Law resources written by Kathryn Cearn OBE, see [Practice note, Kathryn Cearn OBE: contributed content](#).

### Charities as will beneficiaries: new practice note

We have published a new resource, [Practice note, Charities as will beneficiaries](#). The note considers the issues that may arise, both for personal representatives and recipient charities, when a charity is a beneficiary in a will. Among other topics, it discusses problems in interpreting gifts to charities and what steps can be taken to clarify the position. It also looks at the tax treatment of gifts to charity.

The note will be helpful to personal representatives and their legal advisers, as well as to legacy management teams in charities and those who advise them.

For signposting to all our resources on wills, see [Wills toolkit](#).

### Accounting and reporting by charities: new practice note

We have published a new [Practice note, Accounting and reporting by charities: overview](#), written in collaboration with [Kathryn Cearn OBE](#), an independent consultant specialising in financial reporting, audit and governance.

The note provides guidance on the key requirements for accounting and reporting by charities established under the law of England and Wales. It considers the requirements for charities to keep accounting records, prepare statements of accounts and arrange for the

external scrutiny of such accounts by either an auditor or independent examiner.

It then describes the duties of charity trustees of a registered charity to prepare and file with the Charity Commission:

- A trustees' annual report.
- Annual accounts.
- An online annual return.

For further guidance on charity accounting requirements, see [Practice note, Charity accounting standards](#). To access all of our resources on charity law and practice, see [For charity lawyers](#). For all Practical Law resources written by Kathryn Cearn OBE, see [Practice note, Kathryn Cearn OBE: contributed content](#).

### New article published: Supreme Court grasps the nettle (bed) and gives lesson on sale of school land

We have published [Article, Supreme Court grasps the nettle \(bed\) and gives lesson on sale of school land](#). In this article, John Clargo, a barrister at Hardwicke, discusses the recent Supreme Court decision in *Rittson-Thomas and others v Oxfordshire County Council [2021] UKSC 13* and its implications for "statutory reverters" under section 2 of the School Sites Act 1841.

### Charities Bill 2021-22: new resources

We have published a new [Practice note, Charities Bill 2021-22: proposed changes to law and practice](#). This describes the proposals for charity law reform set out in the Charities Bill 2021-22, which was introduced to Parliament on 26 May 2021. The Bill aims to reduce unnecessary bureaucracy for charities in England and Wales, saving them time and money, primarily by amending the Charities Act 2011 (ChA 2011).

The proposed reforms are wide-ranging and include changes to the law and practice on changing purposes and amending governing documents of charities, cy-près schemes and the proceeds of failed fundraising appeals, permanent endowment and ex gratia payments, the restrictions on dispositions and mortgaging charity land (in Part 7 of ChA 2011), Charity Commission powers to require charities to change or stop using inappropriate names, appointing and remunerating charity trustees, charity mergers and incorporations, and litigation costs in the Charity Tribunal.

Our new practice note provides detailed guidance on how the law will change, with links to our resources on the current law. To enable practitioners to keep up-to-date with progress of the Bill, we have also published a new [Charities Bill 2021-22 tracker](#).



### **Incorporated body of charity trustees: new parties clause**

We have updated our *Standard clauses, Charities as parties to documents* to include *new wording* to be used when a trustee body incorporated by a certificate issued by the Charity Commission under Part 12 of the Charities Act 2011 (or earlier provisions) is to be a party to a deed, contract or other document.

Such a certificate vests all real and personal property belonging to an unincorporated charity in the name of the corporate body and enables the charity's trustees to enter into contracts, sue and be sued in the name of the corporate body, rather than in their own name.

Our thanks to *Liz Brownsell*, Partner and Head of Charities, at *Birketts LLP* for her assistance in drafting this new clause.

### **Ask**

Practical Law Private Client publishes questions we receive from subscribers, together with replies from the *Practical Law Private Client team*.

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

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

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

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