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Charities update

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Agenda

- Introductions

- 1. Trends and themes from Charity Commission inquiries
- 2. Elections, campaigning and political activity by charities
- 3. Culture wars – issues for charities
- 4. Brief update on implementation of the Charities Act 2022

- Any questions?

Introductions

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1. Trends and Themes from Charity Commission Inquiries

Gina Cheetham

What is a Charity Commission Inquiry?

- s 46 Charities Act 2011
 - Statutory powers
- When is an inquiry opened?
 - Potentially serious misconduct or mismanagement of a charity
 - Risk to charity's assets or beneficiaries
 - Failure to comply with previous regulatory directions and requirements
- What is the purpose?
 - To determine extent of alleged problems, identify risks and decide on any necessary action
- Publication of Inquiry Reports
 - Lessons for the wider sector

Themes in 2022 and 2023

- Financial management and controls
- Dealing with conflicts of interest
- Compliance with governing document

- Internal financial controls are essential to charity trustees so that they can meet their legal duties to:
 - manage the charity’s resources responsibly
 - protect the charity’s assets
 - make informed decisions about the charity’s financial position
 - be properly accountable
- Internal Financial Controls for Charities (CC8)
 - General Principles
 - Detailed guidance
 - Checklist

Financial Management – What Can Go Wrong?

- Failing to keep adequate accounting records when sending millions of pounds in aid abroad.
 - See: [Charity Inquiry: Assyrian Church of the East Relief Organization](#)
- Trustees failing to demonstrate effective oversight of senior staff who made unauthorised use of the charity credit card, went on unauthorised overseas trips and misused charity funds.
 - See: [Charity Inquiry: Rhema Church London](#)
- Holding hundreds of thousands of pounds worth of cash at the charity's premises instead of paying the cash into the charity's bank account, breaching trustee duties and governing document.
 - See: [Charity Inquiry: Darul-Uloom School London](#)
- A charity significantly increasing its expenditure without any financial planning, budgeting or long-term plan; inadequate evidence of proper consideration by trustees of spending on business class travel.
 - See: [Charity Inquiry: The Everlasting Arms Ministries](#)

Financial Controls – What Should Trustees Do?

- Understand appropriate types of control
 - Size/structure/where/what
 - Governing document requirements
- Embed and review internal financial controls and monitor compliance
- Split financial duties
- Understand and monitor financial position and performance
 - Consideration of financial information by all trustees
 - Delegation and reporting
- Keep proper accounting records and prepare trustee annual reports

Managing Conflicts of Interest

- Trustees must:
 - Act in the best interests of the charity; and
 - Not put themselves in a position where personal interest conflicts with trustee duty
- Where potential personal benefit to a trustee:
 - It must be properly authorised; and
 - Any conditions attached to the authority must be complied with
- “The existence of a conflict of interest does not reflect on the integrity of the affected trustee, so long as it is properly addressed.”
 - CC29 Conflicts of Interest guidance

Conflicts of Interest – What Can Go Wrong?

- A charity borrowing from and proposing to sell a property to person who was both a family member of one of the trustees, and the owner of a charge against the property: there was no conflicts of interest policy place, nor did the trustees understand how to identify a conflict of interest.
 - See: [Charity Inquiry: Beth Yosef Foundation](#).
- A charity entering into complex transactions with companies owned personally by the charity's trustees or connected to them, with no effective management of the conflicts of interest which arose in the transactions.
 - See: [Charity Inquiry: Achiezer](#).
- A chair of a trustee board transferring funds from the charity's bank account to their own personal bank account to reimburse themselves for money spent on behalf of the charity, without the supervision or authorisation of another trustee. Payments to a related party without written agreement or management of conflict of interest.
 - See: [Charity Inquiry: One Community Organisation](#).

Conflicts of Interest – What Should Trustees Do?

- Trustees should:
 - understand and be able to identify a conflict of interest
 - declare conflicts of interest
 - prevent them affecting decisions about the charity
 - record the conflict and be able to show they have handled it appropriately

Complying With Your Governing Document – What Can Go Wrong?

- Failure to act within charitable purposes is a breach of trust with potential liability for trustees
- Decisions made by inquorate trustee meetings are invalid
- Failure to make trustee appointments in accordance with governing document or to ensure appointees are eligible to become trustees can lead to inquorate meetings and invalid decisions
- Failure to ensure minimum number of trustees is a failure to properly administer a charity



2. Elections, Campaigning and Political Activity for Charities

Laura Sherratt

1. Regulatory Framework

Law and guidance

Legislation	<ul style="list-style-type: none"> • Elections Act 2022 • Lobbying Act 2014 • Political Parties, Elections and Referendums Act (PPERA) 2000 • Representation of the People Act (RPA) 1983
Charity Commission Guidance	<ul style="list-style-type: none"> • CC9: Campaigning and Political Activity Guidance for Charities • Charities, Elections and Referendums
Electoral Commission Guidance	<ul style="list-style-type: none"> • Guidance for non-party campaigners

Key terms

“Campaigning”	Awareness-raising and efforts to educate the public by mobilising their support on a particular issue, or to influence public attitudes
“Political activity”	Activity aimed at securing / opposing any change in the law or policy or decisions of government, local authorities or other public bodies in the UK or abroad

2. Key Principles

	When can a charity engage in political activity?
1.	A charity cannot exist for a political purpose.
2.	Charities may undertake campaigning and political activity only in the context of supporting the delivery of its charitable purposes.
3.	Charities can campaign for a change in the law , policy or decisions where such change would support the charity's purposes.
4.	Charities must not give support or funding to a political party , candidate or politician.
5.	When campaigning, charity trustees must comply with charity law , as well as other civil and criminal laws that may apply.
6.	The principles of charity campaigning and political activity are the same whether the activity is carried out in the UK or overseas.

3. Campaigning Requirements

When does political activity fall under PPERA 2000?

Do you expect to undertake **regulated activity** with a value over the **spending threshold** during the **regulated period**?

Regulated activity:	<p>“Purpose test”: is the activity intended to promote electoral success for:</p> <ul style="list-style-type: none"> • One or more registered parties; • One or more parties who advocate particular policies; or • Candidates who hold particular opinions / policies?
Regulated period:	<ul style="list-style-type: none"> • The 12 months preceding a general election • Other periods apply for other types of election
Spending threshold:	<ul style="list-style-type: none"> • £20,000 in England; £10,000 in Scotland, Wales and NI
Outcome:	<ul style="list-style-type: none"> • Must register with the Electoral Commission as a non-party campaigner before exceeding the relevant spending threshold • Must then comply with controls on spending and donations, and submit detailed reports after the election

4. Changes under the Elections Act 2022

Change	Effect
Lower-tier campaigners threshold	<ul style="list-style-type: none">• Lower spending threshold of £10,000 throughout the UK• Must register with Electoral Commission (EC), but fewer compliance requirements
Digital imprint regime	<ul style="list-style-type: none">• Requirement to declare “promoter” on election material and the person on whose behalf it is published• Previously applied to printed materials; now applies to electronic materials too
Non-UK organisations	<ul style="list-style-type: none">• New lower limit of £700 on election campaign activity by charities not based in the UK
New Code of Practice	<ul style="list-style-type: none">• EC is due to produce a Code for non-party campaigners• Will explain the spending and donation controls and provide a new statutory defence

5. Other relevant laws and regulations

Law / regulation	Considerations
Companies Act 2006	<ul style="list-style-type: none">• Requires member authorisations for donations to political parties
Representation of the People Act 1983	<ul style="list-style-type: none">• Rules for local authority and mayoral elections• Includes spending limits and reporting requirements
Advertising Codes of Conduct	<ul style="list-style-type: none">• Review all campaign content closely• Important for reputation management
Defamation and privacy laws	<ul style="list-style-type: none">• As above
The Registrar of Consultant Lobbying	<ul style="list-style-type: none">• Necessary to register if you are undertaking consultant lobbying, i.e. engaging with govt ministers or senior civil servants

6. The wider context

Issues for charities in the current landscape

- Latest date the next election could be called is January 2025, so a regulated period is likely to start from January 2024 or potentially earlier
- Consider how best to engage with movements such as trans rights / Pride Progress, Just Stop Oil / Extinction Rebellion, Black Lives Matter etc., within the charity law framework and managing potential reputational issues
- New social media guidance – light on specific legal requirements
- Changing legal landscape – e.g. Crime and Sentencing in Court Act 2022, Public Order Act 2023; increasingly restrictive on protests and civil society dissent / discussion
- Recent judgement on *Mermaids v Charity Commission and LGB Alliance*
- Recall fundamental principle: any campaigning you undertake as a charity must further your charitable objects and support the delivery of your charitable purposes



3. Culture Wars – Issues for Charities

Ben Brice

3. Culture wars

Recent examples:

- National Trust/Restore Trust
- The Churchill Fellowship (Winston Churchill Memorial Trust)
- Oriel College - Cecil Rhodes statute
- Jesus College/Cambridge University - Benin bronzes
- Oxfam International – Pride promo
- Mermaids v LGB Alliance

3. Culture wars

Charity Commission stance:

- National Trust – report re links between properties and colonial history and slavery
- Regulatory compliance review
- Supported objects – fulfilled legal duties
- But critical re public messaging
- Much research/consultation – but failed to pre-empt reaction sufficiently
- Should have done more to explain link between report and NT's purposes

3. Culture wars

Application in practice:

- Known example – Oriel College – Cecil Rhodes statue
- Similar situation to NT – commissioned committee to consider options for statue post BLM
- Decision – received criticism on both sides
- Appears made due to Government threat of intervention (i.e. to override any planning permission, if granted)
- Now – plaque to explain plaque & statue

3. Culture wars

Draft Social Media guidance:

- Addresses direct charity engagement and staff use
- "Emotive or controversial topics"
- Must be within objects
- Take account of reputational impact
- Concerns raised in consultation

3. Culture wars

Decision making:

- Any situation – range of decisions – no single right or wrong
- Trustees to be satisfied decision falls within range
- Advance objects/fall within powers
- Good faith – in charity's interests
- Sufficient information – all relevant factors – proportionate approach
- Ignore irrelevant factors (other parties' interests)
- Manage conflicts of interests
- Properly recording decision
- If high risk – likelihood of adverse publicity – consider engaging with Charity Commission

3. Culture wars

Mermaids v LGB Alliance

- Charities Tribunal decision
- In fact v Charity Commission's decision re registration
- Decision based re legal standing
- Claim - impacted on Mermaids' legal rights
- No legal right to funding opportunities nor freedom from criticism
- Possible appeal - not known yet



4. Implementation of the Charities Act 2022

Ben Brice

4. Charities Act 2022

Implementation:

- **31 October 2022:**
 - Power to amend Royal Charters
 - Failed appeals
 - **Ex-gratia payments (Delayed)**
 - Trustee remuneration for goods/services
 - Trust corporation status
 - Tribunal costs

- **14 June 2023:**
 - Permanent endowment
 - Charity land (expert advice)
 - Charity names
 - Connected persons

- **Autumn 2023:**
 - Charity constitutions
 - Charity land (exceptions and statements)
 - Ratification of trustee appointments
 - Remuneration of trustees
 - Charity mergers

Any questions?

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