



## Hewitsons Charities E-Update

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### Supreme Court rules in favour of charities in key legacy case

The Supreme Court has handed down its judgment in the case of *Ilott v The Blue Cross and others* (previously known as *Ilott v Mitson*). The panel of 7 judges ruled in favour of the group of beneficiary charities against the claim of the estranged daughter of the deceased donor, reducing the level of her award granted in the Court of Appeal, and bolstering the principle of testamentary freedom. See this [recent article](#) by Lucinda Brown in our Contentious Trusts and Probate team for more details.



[Chris Knight](#)  
Head of Charities & Education

### Common Reporting Standard: do you need to act now?

CRS is a new global reporting regime to prevent tax avoidance. It is already in place and for those charities it affects there is a need to act on this by notifying HMRC and gathering and reporting certain information. There is no general exemption for charities.

This applies to charities who receive more than 50% of their income from investments or trading in financial assets, there is discretionary management of those investments,



and that arrangement has been in place for 3 years (or, if less, the charity's whole existence). The first task is therefore to decide if your charity is caught by this and is thus an 'investment entity'.

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Solicitor, Charities & Education

If your charity is affected, you or your financial advisor will need to report on certain matters for the 2016 year by 31 May 2017, and then in subsequent years. Reportable matters can include (depending on the legal structure of the charity) the identity of any grant recipients, settlors (founding donors who are still alive) or lenders to the charity. Reporting is only needed where such people are in 'reportable jurisdictions' (which excludes the UK but includes most of Europe and an increasing number of other countries). To gather this information, the charity's administration and finance systems will need to be adapted.

### **Draft Charities Bill expected in the summer**

A new Charities Bill is expected to be published in the summer, aimed at reforming certain problematic and complex areas of charity law. The Bill is likely to include provisions on the amendment of charitable purposes and governing documents, the regulation of charity land transactions and the use of permanent endowment, and powers around incorporation and mergers. This follows a lengthy and detailed consultation on technical issues in charity law carried out by the Law Commission (details of which can be found [here](#)).

### **Fundraising Regulator consults on changes to Code and Fundraising Preference Service**

The reform of fundraising regulation continues apace, with the new Fundraising Regulator consulting on changes to the Code of Fundraising Practice and also its proposed Fundraising Preference Service. The Code contains legal requirements and standards for the various forms of fundraising carried out by charities. Suggested changes relate to current key areas of concern, such as fundraising communications with people in vulnerable circumstances and the delivery of contracts by professional fundraising organisations. The Fundraising Preference Service is due to launch in the summer and will allow individuals to manage (and halt) communications from specific charities. See [here](#) (Code) and [here](#) (FPS) for details of the consultations.

### **Data Protection rules are tightening**

Closely linked to the above issue of fundraising regulation is that of data protection. In two recent decisions charities have faced hefty fines for breaches of data management regulations. The RSPCA was fined £25,000 and the British Heart Foundation £18,000 by the Information Commissioner's Office for mishandling donors' personal data. Other charities' cases and sanctions are pending. Stories of zealous approaches, data mining, wealth screening and so on are frequently in the news. However the ICO has said opt-in is the safest approach to direct marketing, which includes charities' supporter recruitment and fundraising. The position is only going to get stricter, with the imposition of the General Data Protection Regulation in May 2018. This is, in the Information Commissioner's words, a game changer. Accountability, clarity, trust and transparency will be the only ways to undertake legitimate contact in future and indeed, as some charities have found to their cost, we should all have been doing this by now anyway.

## **Almshouse residents' status confirmed**

The Court of Appeal has ruled (in the case of *Watts v Stewart and Others* decided in December 2016) that residents of almshouses are licensees and not tenants. This has been the understanding for many years but had been challenged in this case and a reversal would have had serious consequences for the sector in adapting to additional rights for residents. As it turns out, the decision provides welcome reassurance to almshouses.

## **Commission reports on official warnings and disqualification powers**

In December the Commission provided further details on its new powers to issue official warnings and disqualify individuals from trusteeship for up to 15 years, providing some clarity on these measures. The power to issue official warnings came into effect on 1 November 2016 and the power to disqualify on 1 October 2016. Following these consultations, the Commission has extended the notice period before it issues an official warning to 28 days (from 14 days in the draft guidance). Publication of warnings by the Commission will also be determined in each case, rather than being an automatic assumption. Regarding the disqualification power, the Commission has clarified that individuals will receive one month's notice of the action and be invited to make representations, which will be taken into consideration when deciding whether or not to proceed with the disqualification. Individuals will have a right of appeal to the Charity Tribunal, or may apply to the Commission for a variation or discharge of the order. Details and relevant guidance can be found [here](#) on official warnings and [here](#) on disqualification powers.

## **Trustee liability under scrutiny**

The critical issue of trustee liability arose in a recent report published by the Charity Commission regarding Kingsway International Christian Centre. The charity's previous board was criticised over the investment of £5 million of the charity's funds in a scheme operated by a former trustee, which resulted in a net loss to the charity of £3.9m. The board was found to have failed to take independent professional advice or fully understand the high risk nature of the proposed investment, and failed to properly manage the conflicts of interest arising. Although the charity is a company limited by guarantee, the breach of duty was such that the interim manager appointed by the Commission advised the current board to pursue a legal claim against the decision-making trustees for restitution of charity funds. A confidential out of court settlement was subsequently reached, providing a stark reminder that even trustees of corporate charities may be made personally liable for serious breaches of duty. See [here](#) for more details.

## **Spring Budget round-up**

There were few announcements directed at the charity sector but many which affect the sector, owing to its diverse interests and activities. Amongst the more important ones are these:

- **Employment:** consultation on tax free benefits for accommodation provided by employers will commence this month.
- **Business rates:** the reform announced and features heavily in the press will be accompanied by a fund for local authorities to boost discretionary relief. Charities may benefit from this when they apply for 100% relief (80% relief already being mandatory).
- **Museums and galleries:** a new tax relief regarding exhibitions will commence in April,

with certain caveats and up to prescribed limits.

- **Education:** a number of funds were announced including for academic research placements, research and innovation in universities, school maintenance, and new free schools (including those sponsored by universities and independent schools). Additionally, the introduction of new T Levels for technology education was announced.
- **Public funding:** substantial funding for local authorities for adult social care, local transport, various NHS funding initiatives, and a fund for women's charities were also announced.

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## Charity Lunchtime Forums

We would be delighted if you can join us at one of our next Charity Lunchtime Forums.

Over the Spring we are hosting forums in four locations: London, Milton Keynes, Cambridge and Northampton. These run from **12:30pm to 2:30pm**. These forums are suitable for trustees and senior managers of all charities including schools, colleges, universities and unregistered charities.

Our focus will be "An Active Regulator". Against a backdrop of diminishing resource for the Charity Commission and increasing demand for public accountability from charities, new laws strengthening the Commission's powers of intervention are now well established. Even the best governed charity can unknowingly fall foul of these powers. So what are the powers and how do you avoid them being used on you and your charity?

Should you be interested in attending one of our Lunchtime Forums then please register your interest by clicking [here](#).

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