
The Charity Law & Practice Review

CHARITY PROCEEDINGS

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INTRODUCTION

The Commission has recently provided a series of seminars looking at issues surrounding charities and litigation. One of the issues explored was the Commission's understanding of the law relating to "charity proceedings" and how the Commission exercises the jurisdiction conferred by section 33 of the Charities Act 1993. The editors of Charity Law and Practice Review have invited the Commission to turn the presentation which its lawyers gave at those seminars into an article for the Review.²

Building on that presentation, this article deals firstly with the tests that the Commission applies when it is asked to make an order under section 33. The second part of the article looks at various procedural matters. The final part considers what comfort the Commission can provide on the question of costs in charity proceedings.

Applications to bring charity proceedings frequently arise as a result of disputes within a charity. In this sort of case, the Commission encourages charities to explore alternative forms of dispute resolution (ADR) where appropriate. The use of ADR procedures in general, and mediation in particular, to resolve charity disputes is discussed more fully elsewhere in this issue by Debra Morris and Jean Warburton in "*Mediation and Charities: Frustrated Desires*".

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² The seminars, which proved to be very popular, were conducted in London by Alice Holt, Michelle Russell and Rachel Bardiger.

THE TESTS APPLIED

Charity proceedings are legal proceedings concerned with the internal affairs of a charity. Unlike other forms of litigation in which a charity may be involved, in general charity proceedings can be taken only if they are authorised by the Charity Commission.³ In the absence of special reasons, the Commission is bound to withhold consent where the case can be resolved using the Commission's own statutory powers.⁴ The origin of this restriction lies in section 17 of the Charitable Trusts Act 1853 which was introduced to counter the then prevalent practice of using charitable funds in unnecessary litigation concerning the internal administration of charities. The Commission has exercised this screening role since it took over primary responsibility for the regulation of charities from the courts in the 19th century. The broad rationale of the role is that, if there is an issue relating to the charity which needs to be resolved and which can be dealt with through the powers given to the Commission, resort to the court is an unnecessary and unjustifiable expense. Lord Justice Mummery succinctly set out the purpose of section 33 in the recent case of *Muman v Nagsena*:⁵

"to prevent charities from frittering away money subject to charitable trusts in pursuing litigation relating to internal disputes."

In deciding whether or not to make an order under section 33, the Commission looks at a range of issues:

- Are the proceedings really charity proceedings?
- Does the person who wants to take the proceedings have a legitimate interest in the internal affairs of the charity?
- Can the underlying problem be resolved by the Commission using its own powers?
- Is the claim frivolous and unfounded?
- Is it in the interests of the charity for the case to go to court?

³ Charities Act 1993, section 33(2).

⁴ Other than the Commission's power under section 32 of the Charities Act 1993 to take proceedings itself: section 33(3).

⁵ [1999] 4 All ER 178 at 184.

Charity proceedings

Charity proceedings are defined by section 33(8) of the Charities Act 1993:

*“(8) In this section “charity proceedings” means proceedings in any court in England or Wales brought under the court’s jurisdiction with respect to charities, or brought under the court’s jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.”*⁶

The court’s charitable jurisdiction is exercised over the domestic administration of charities. It includes the court’s jurisdiction to make a scheme – a form of relief unique to charities. However, it also extends to forms of relief which are available in respect of non-charitable organisations.⁷ Claims which are adverse or hostile to the charity (e.g. actions for breach of contract or debt recovery and employment disputes) and proceedings to determine the charitable status of an organisation are not charity proceedings. Nor are proceedings in which a question about the administration of a charity arises only incidentally.⁸ However, legal proceedings which are ostensibly a dispute between a charity and an outsider, such as possession proceedings, may be caught by section 33 if the proceedings raise issues relating to the administration of the charity.⁹

Charity proceedings include legal proceedings which are concerned with the governance of the charity. Hence applications for schemes for the regulation of a charity, or for the appointment of a trustee for a charity, are charity proceedings. So, too, are challenges to the validity of decisions made in the administration of a charity, such as decisions made at annual general meetings. Legal proceedings that relate to the way that the charity operates can be charity proceedings, such as claims to be eligible to benefit from a charity,¹⁰ claims for breach of trust and

⁶ Charities Act 1993, section 33(8). Proceedings relating to the activities in England and Wales of a charity established in another jurisdiction are not charity proceedings: see *Gaudiya Mission v Brahmachary* [1997] 4 All ER 957; [1998] 2 WLR 175.

⁷ *Construction Industry Training Board v. A-G* [1973] Ch 173.

⁸ *Rendall v. Blair* (1890) 45 Ch D 139 (CA): proceedings for an injunction to prevent school managers dismissing a school master constituted a claim in contract, not charity proceedings. That was so notwithstanding that the proceedings raised an issue about whether the managers were properly appointed, which required consideration of the trusts of the charity.

⁹ *Muman v Nagasena* 1999] 4 All ER 178. In that case, the issues relating to the administration of the charity were raised in the defence and counter-claim.

¹⁰ *Braund v. Earl of Devon* (1868) 3 Ch App 800; *Rooke v. Dawson* [1895] 1 Ch 480.

other challenges to the validity of decisions of the charity trustees. (This includes challenges to the decisions of receivers and managers appointed by the Commission who exercise the powers of charity trustees). Applications to the court by charity trustees for *Re Beddoe*¹¹ orders (which authorise the use of charity funds for litigation) also constitute charity proceedings. The use of *Re Beddoe* orders is discussed further below.

Except where they raise substantive issues relating to the administration of a charity, proceedings which are not caught by section 33 include:

- actions for debt;
- actions for breach of contract;
- claims for wrongful dismissal;
- possession proceedings against former employees;¹²
- personal injury claims;
- claims for defamation;
- claims in tort;
- boundary disputes;
- disputes about the existence of a charitable trust.

The question of whether legal proceedings are charity proceedings is only occasionally problematic. However, the question does arise from time to time in cases of applications for judicial review and cases where relief is sought of a kind that is unusual in the normal run of charity proceedings.

Judicial review

Applications for judicial review raise two problems. The first is whether judicial review proceedings against a charity exercising public functions are charity

¹¹ [1893]1 Ch 547.

¹² *Holme v Guy* (1877) 5 Ch D 901 (CA). But see *Muman v. Nagasena* [2000] 1 WLR 299 (CA), where a claim for possession became charity proceedings because it turned on whether the defendant had been effectively removed as patron and resident monk of the charity.

proceedings. In reported cases where the point has been argued, the courts have consistently taken the view that applications of this kind are charity proceedings.¹³ However, it may be arguable that judicial review cases which are concerned with an existing statutory right, which has been affected in some way by a decision of the charity, are not really charity proceedings at all.

The second problem revolves around the principle that judicial review is not available where some other remedy is open to the applicant. Hence where a decision by charity trustees can be challenged through proceedings under the court's charity jurisdiction, judicial review should not usually be available. There are cases at first instance that support this view.¹⁴ However, there is also at least one (unreported) case at first instance where this approach has been rejected by the judge (but without hearing legal argument). This issue is not of merely academic interest. Judicial review proceedings focus on the position of the individual complainant, while under the charity jurisdiction the focus tends to be on the public interest in the due administration of charities. Charity law remedies are wider than administrative law remedies. And the charity law approach arguably gives greater scope for investigating the facts. However, the question of whether judicial review is appropriate in any given case is not a matter which the Commission is able to determine. Pending a definitive decision by the courts, we will raise this question in a case only to ensure that the issue has been properly addressed.

Other problematic cases

The court itself may decide that a case constitutes or includes charity proceedings and adjourns so that the Commission can consider giving permission for the proceedings. In such cases, where we give permission, it is often on the basis of an amendment of the claim to identify the charity law relief which is being sought.

More difficult are cases which plainly concern the internal affairs of a charity but where the relief sought is not of the kind usually asked for in charity proceedings. The issue has arisen, for example, where damages have been sought by a trustee for alleged breach of duty of care by the other trustees in making appointments from among their number to remunerated posts within the administration of the charity. In cases of uncertainty, we will form a view as to whether the proceedings are charity proceedings and proceed accordingly. However, in the last resort, only the court can determine whether proceedings are charity

¹³ *R (on the application of Heather) v Leonard Cheshire Foundation* [2002] 2 All ER 936.

¹⁴ For example, *Scott v National Trust* [1998] 2 All ER 705).

proceedings requiring our authority.

Person interested

Charity proceedings may be taken only by: ¹⁵

- the charity;
- any of the "charity trustees" (the persons having the general control and management of the administration of a charity¹⁶);
- any "person interested in the charity;"
- any two or more inhabitants of the area of the charity if its is a local charity;¹⁷
- the Attorney General, or the Charity Commissioners acting in accordance with section 32 of the Charities Act 1993.

Charity proceedings in respect of exempt charities do not currently require authorisation by the Commission, nor do proceedings brought by the Attorney General.¹⁸ However, the Charities Bill proposes that exempt charities will in future need to seek the Commission's consent to such proceedings¹⁹.

Although the courts have declined to supply a comprehensive definition of the phrase a "person interested in the charity", the scope of that phrase has been considered in several cases.

In *Haslemere Estates Ltd. v Baker*²⁰ the court held that many people may be interested in the property of a charity without, for this purpose, being interested in the charity. A distinction was made between a claim that was adverse to the

¹⁵ Charities Act 1993, section 33(1).

¹⁶ Charities Act 1993, section 96(1).

¹⁷ A local charity is defined in section 96(1) of the 1993 Act.

¹⁸ Charities Act 1993, section 33(6), which also disapplies section 33 to proceedings brought by the Commission in accordance with section 32 of the Act.

¹⁹ Schedule 8 of the Charities Bill proposes to repeal the words "other than an exempt charity" in subsections (2) and (7) of section 33 of the Charities Act 1993.

²⁰ [1982] 3 All ER 525.

charity and an interest in the charity. The fact that an individual has entered into a contractual relationship with a charity does not in itself make him or her a “person interested”, if what he or she is doing in taking the proceedings is pursuing contractual rights against the charity.

Sir Robert Megarry explained the court’s approach in this way:²¹

“Those who have some good reason for seeking to enforce the trusts of a charity or secure its due administration may readily be accepted as having an interest in the charity, whereas those who merely have some claim adverse to the charity, and seek to improve their position at the expense of the charity, will not. The phrase, I think, is contemplating those who are on the charity side of the fence, as it were, however much they may disagree with what is being done or not being done by or on behalf of the charity. The phrase does not refer to those who are on the other side of the fence, even if they are in some way affected by the internal affairs of the charity.”

In *Re Hampton Fuel Allotment Charity*²² Lord Justice Nicholls rejected the suggestion that a “person interested” had to be either eligible to benefit from the charity or entitled to participate in the charity’s management. He took the view that this test is likely, depending on the circumstances, to be too wide or too narrow.

Although he accepted that there may be cases where an actual or potential beneficiary under a nationwide charity will qualify as a person interested in that charity, he did not accept that an actual or potential beneficiary will always qualify.

As regards supporters of the charity, he said²³

“Certainly we would have no doubt that a person does not qualify as a person interested in a charity simply because he has a sentimental or altruistic interest in it or provides modest financial support for it... But, at the other edge of the spectrum, we think that it would be surprising if a person who founds and finances a charity can never thereby qualify as a

²¹ [1982] 3 All ER 525 at 537.

²² [1988] 2 All ER 761 at 767.

²³ [1988] 2 All ER 761 at 766.

person interested in that charity."²⁴

Seeing no occasion to attempt to delimit a boundary that Parliament has left undefined, Lord Justice Nicholls' broad test was:

"If a person has an interest in securing the due administration of a trust materially greater than, or different from, that possessed by ordinary members of the public ... that interest may, depending on the circumstances, qualify him as a 'person interested'."

In *Scott and others v National Trust for Places of Historic Interest or Natural Beauty and another*²⁵, Mr Justice Robert Walker applied that test and found that the plaintiffs in that case, who were huntsmen and tenant farmers, could be considered to be partners with the National Trust in the management of the land in question, and in the successful preservation of the red deer population on that land. Accordingly, since the preservation of deer could fairly be considered to be one of the Trust's statutory purposes under s.4 (1) of the National Trust Act 1907, he held that the plaintiffs were persons interested in the charity.

In *Gunning v Buckfast Abbey Trustees Registered*,²⁶ Mrs Justice Arden held that fee-paying parents of children at a preparatory school (which was run as part of the activities of the Abbey) were persons interested in the charity, notwithstanding the fact that they were neither subscribers to, nor beneficiaries of, the charity. She applied the *Hampton Fuel Allotment Charity* test and held that the parents had a materially greater interest than ordinary members of the public in securing the due administration of that part of the charitable activities of the Abbey represented by the school. This was more than merely the pursuit of a contractual claim adverse to the charity.

Can the case be dealt with by the Commission?

In some instances, the relief sought in charity proceedings is of a kind that the Commission itself has power to grant. For example, the Commission shares the

²⁴ In *RSPCA v AG* [2001] 3 All ER 530 the court was prepared to accept that members of the charity were interested persons as regards the proper construction of the charity's powers to renew membership or expel members. However, the mere fact that any member of the public might apply for membership was not enough to give a non-member the status of a "person interested".

²⁵ [1998] 2 All ER 705.

²⁶ Times Law Report of 9th June 1994.

court's jurisdiction to make orders appointing trustees or establishing a scheme.²⁷ The Commission may be able to resolve the matter by giving advice or by exercising its remedial powers.²⁸ However, the Commission cannot exercise its power to make orders of that kind if it concludes that the case should be adjudicated upon by the court by reason of its contentiousness, or of any special question of law or fact that it raises.²⁹

In other cases, the Commission may simply not have power to grant the specific relief that the applicant seeks. For example, the Commission cannot determine the validity of acts carried out in the administration of a charity. Hence it cannot resolve the frequently-occurring issue of whether trustees have been validly appointed. This is an issue which usually arises in the context of disputed elections at annual general meetings of the members of charities. However, if the underlying problem can fairly be analysed in terms of serious doubt as to whether the charity's governing body is properly-appointed, the Commission may be able to deal with the case through the use of its own powers. In such a case, the Commission may be able to facilitate the holding of a further annual general meeting at which trustees can be validly elected. Of course, such an approach would not resolve the question of whether the disputed election were legally effective. However, if, as is often the case, trustees are elected for only a year, it may be difficult to justify spending time, effort and resources on determining a question which is of little consequence from wider perspective of the charity's long-term interests.

Special reasons

Even if the Commission's powers can be used to deal with the case, it may be that the charity's long-term interests really require that a difficult question of law or a disputed issue of fact should be resolved once for all by the court. The urgency and importance of a matter may be enough to justify authorising the proceedings. For example, a challenge might be proposed to a decision of trustees to close an educational institution. The loss of students, staff and public confidence which will result from the announcement of that decision will very quickly render nugatory any subsequent efforts to save the School. If the proper exercise of the Commission's powers to intervene is likely to be time-consuming, that circumstance may be sufficient to constitute a special reason for authorising the

²⁷ Charities Act 1993, section 16(1).

²⁸ Charities Act 1993, section 18.

²⁹ Section 16(10).

proceedings (assuming that there is some basis for the challenge).

Are the proceedings frivolous and ill-founded?

Section 33 is regarded by the Courts as a 'protective filter' whose chief function is to protect charities "from being harassed by a multiplicity of hopeless challenges".³⁰ We must be satisfied that the proceedings are not obviously "frivolous and ill-founded".³¹

Accordingly, in order to consider an application for a section 33 order, we need to have copies of the following documents:

- the draft claim form
- supporting statements
- counsel's opinion or other legal advice on the merits of the claim and the prospects of success
- any other relevant documents.

We will also need details of

- the estimated costs of the proceedings
- the value of the asset involved (if appropriate)
- information about the charity's finances (where the application is made by or on behalf of the charity)
- an evaluation of the benefits to the charity that are expected to flow from litigation
- an assessment of the risks to the charity from the litigation (including reputational risks)
- the steps that have been taken to compromise or mediate.

³⁰ *Scott and others v National Trust* [1998] 2 All ER 705 at 712.

³¹ *Re Hampton Fuel Allotment Charity* [1988] 3 WLR 513 at 520.

We will query claims for relief which appear not to be properly drafted. We will also query legal advice about whose correctness or adequacy we have reservations. However, in making an order, we are not formally endorsing the proceedings or committing ourselves to a view about their likely outcome.

The interests of the charity

In general, in dealing with casework, the Commission is bound to act in the way that best promotes the work of the charity.³² It follows that our role under section 33 is wider than merely screening out proceedings which are legally unfounded. We take the view that we should be reluctant to give consent for proceedings which, although not unfounded in the legal sense, are “hopeless” in the sense that there can be no benefit to the charity in pursuing them. In the example discussed above, the charity may well have no interest at all in the legal validity of the disputed election of a trustee, if the period of office for which the individual was purportedly elected has already expired.

Of course, the validity of the election may well continue to be a burning issue as far as the individual is concerned. Our refusal to authorise proceedings acts as a constraint on his or her right of free access to the court which is guaranteed by Article 6 of the Convention Rights.³³ In dealing with applications for section 33 orders, the Commission has to be able to justify its decision as striking a reasonable and proportionate balance between the need to protect charitable funds from unnecessary litigation and the right of access to the courts.³⁴

³² Charities Act 1993, section 1(4): “It shall be the general object of the Commissioners so to act in the case of any charity (unless it is a matter of altering its purposes) as best to promote and make effective the work of the charity in meeting the needs designated by its trusts; but the Commissioners shall not themselves have power to act in the administration of a charity.” The Charities Bill proposes to repeal section 1 of the Charities Act 1993 and replace it, *inter alia*, with an enlarged statement of the Commission’s objectives, general functions, general duties and incidental powers.

³³ Human Rights Act 1998, Schedule 1, Article 6: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...”. Some constraints upon access to the courts are within a state’s discretion, provided that access remains effective. It is on this basis that the need to obtain leave to apply for judicial review – a requirement not dissimilar to the operation of section 33 – continues to be justified.

³⁴ The applicant’s right of access to the court may not be engaged if what he is seeking is not “the determination of his civil rights and obligations”. However, that does not mean that we can disregard the individual’s legitimate desire to have his day in court.

PROCEDURAL MATTERS

Confidentiality

We will generally regard communications between applicants for section 33 orders and the Commission as confidential.³⁵ That is partly because we expect to be given details of the (privileged) legal advice which the applicant has obtained on the merits and prospects for success of the claim, partly because we wish to encourage applicants to be candid about matters which, if disclosed to the prospective defendants, may prejudice their case.

If, exceptionally, we are provided with material by the prospective defendant, we will take that material into account only if it is provided on the basis that it can be disclosed to the applicant.

Mediation

It is plainly highly desirable that other forms of dispute resolution should be explored before resort is made to litigation. The Court of Appeal has indicated that litigation should usually be very much a last resort.³⁶ Accordingly, we will want to explore this possibility in cases where it may be appropriate.

The role of the Attorney General

The Attorney General is a necessary party to all charity proceedings, other than any commenced by the Charity Commissioners, and must be joined as a defendant if he is not a claimant.³⁷ The rationale for this rule of practice is that the Attorney represents the public interest in the due administration of charities. In cases where it seems that the Attorney is unlikely to be called upon to assist the court, or where the cost of his representation would be disproportionate to the amount at stake, he may be a party but not take an active part in the proceedings.

Whether or not he is a party, the Attorney has power to apply to the court to stay charity proceedings which he considers to be oppressive or not in the interests of the charity.

³⁵ In considering applications for disclosure under the Freedom of Information Act 2000, the Commission will have regard to the exemptions available to public authorities and in particular the exemptions in sections 32 (court records), 36 (prejudice to the effective conduct of public affairs), 41 (documents provided in confidence) and 42 (legal professional privilege) of the Act.

³⁶ *Muman v Nagasena* [1999] 4 All ER 178 at 184.

³⁷ Civil Procedure Rules, Practice Direction supplementing Part 64, para 7.

If, in the course of considering an application for an order under section 33, the Commission believes that it is desirable that charity proceedings should be brought by the Attorney, it is required to notify him accordingly.³⁸

Form of order

The form of an order under section 33 is an authority for specified individuals to take proceedings against specified defendants for the relief detailed in the order: the order substantially reproduces the relief sought in the claim form by which the proceedings are commenced.

Review of our decision

Where we have refused an application for authority to bring charity proceedings, it may be possible for that decision to be reviewed by the Commission. The applicant will need to show, by fresh evidence or reasoned argument, that the decision to refuse the application was defective in some way and that reversing the decision would better promote the purposes of the charity concerned.³⁹

Where we have authorised charity proceedings, a person directly affected by that decision (which would include a prospective defendant) may be able to have the decision reversed if he or she can persuade us that the decision was made by mistake or on misrepresentation or otherwise than in conformity with the Charities Act.⁴⁰ Again, we would also have to be satisfied that it was in the interests of the charity to discharge the order.⁴¹

Obtaining leave of the court

Where an application for an order under section 33 has been refused, the applicant may apply to a judge of the High Court for leave to take the proceedings.⁴² The application to the court must be made within 21 days of the refusal of the section

³⁸ Charities Act 1993, section 33(7).

³⁹ Charity Commission operational guidance, OG 94 B1, sections 2 and 3.

⁴⁰ Charities Act 1993, section 89(3).

⁴¹ Charity Commission operational guidance, OG 94 B1, section 7.

⁴² Charities Act 1993, section 33(5).

33 order.⁴³ The Commissioners are defendants to the claim, but the claim form need not be served on them.⁴⁴ In practice, the Commission usually takes no part in the proceedings. It is our practice to give reasons in writing for refusing authority for charity proceedings (and a copy of those reasons must be filed with the claim form⁴⁵). The judge may direct the Commission to file a written statement of the reasons for the decision.⁴⁶

COMFORT FOR COSTS

The fact that trustees of a charity have obtained a section 33 order does not in itself entitle them to an indemnity from the charity's funds for the costs that they incur in the proceedings.

Trustees are entitled to pay out of the trust funds (or be reimbursed from the trust funds) any expenses which have been properly incurred.⁴⁷ Where trustees incur costs in unsuccessful litigation, an issue inevitably arises as to whether those costs have been properly incurred. The fact that they have taken, and acted in accordance with, legal advice is not in itself sufficient to show that the costs were properly incurred⁴⁸ (the decision to litigate was, after all, theirs rather than their legal adviser's). In the absence of insurance cover, or a provision in their governing document limiting or excluding liability, the trustees risk being personally liable for the costs.

What comfort can trustees seek in these circumstances? There are two options. One is to apply to the court for a *Re Beddoe* order⁴⁹, which will authorise the trustees to indemnify themselves from the charity's assets. The Attorney General is a party to such an application. The judge may grant an order covering all or part of the proceedings (for example, up to discovery). No order will be made

⁴³ Civil Procedure Rules, Rule 64.6 (1). Of course, this time limit applies whether or not the applicant has invoked the Commission's internal review procedure.

⁴⁴ CPR, Rule 64.6 (3).

⁴⁵ CPR, Practice Direction supplementing Part 64, para 9.2.

⁴⁶ CPR, Rule 64.6 (4).

⁴⁷ As regards trusts, the position is now enshrined in the Trustee Act 2000, section 31(1)

⁴⁸ *Stott v Milne* (1884) 25 Ch D 710.

⁴⁹ See note 11.

where the litigation can be of no benefit to the trust.⁵⁰ Applications by trustees of charities for *Re Beddoe* orders are charity proceedings and hence require our authorisation. It is usually only very complex or high profile cases in which applications are granted, because of the existence of the second option discussed below.

That second option is to ask the Commission for either an order under section 26 of the Charities Act 1993 authorising the use of charitable funds for the purpose of the proceedings, or advice under section 29 of the Act. Trustees who act in accordance with such advice are deemed to have acted in accordance with their trust.⁵¹ Neither a section 26 order nor section 29 advice can have retrospective effect. Both an order and advice may be limited to stages of the proceedings. In each case, the Commission will follow the court's practice. Hence we will need to be satisfied that taking the proceedings will serve the interests of the charity. That will involve consideration of a range of issues, including the strength of the trustees' case, the purpose which will be served by taking the proceedings, whether the trustees have considered other ways of achieving that purpose (e.g. alternative forms of dispute resolution), the charity's ability to meet the costs, the risks of litigation (not only in financial terms, but also in terms of reputation and deflection of the charity from pursuit of its charitable purposes). Much the same sort of information that is required in support of an application for an order under section 33 (discussed above) is likely to be required in support of an application for a section 26 order or advice under section 29.⁵²

⁵⁰ *Weth v Attorney General* Unreported Court of Appeal decision of 23rd February 2001 (Case No: A3/1998/0415).

⁵¹ Charities Act 1993, section 29(2).

⁵² Where the case involves a surrender to the court of the trustees' discretion, or a request for the court's blessing for the trustees' decision, the Commission will expect to see a strong argument to justify such an application.