

What's new at the Charity Commission and Charity Tribunal?

Emma Knuckey reports on recent developments at the Charity Commission and in the Charity Tribunal



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Before joining BWB, Emma spent seven years as an in-house lawyer at the Charity Commission providing legal advice to the commission's various caseworking teams regarding charity law, company law, administrative law, information law and litigation.

Charity Commission

Appointment of Chair

Baroness Stowell was confirmed as the new Chair of the Charity Commission from 26 February 2018, for three years.

She delivered her first major speech as chair at the NCVO Annual Conference in April. The focus of the speech was the fall in public trust and confidence in charities and the commission's role in helping to restore it.

Consultation on Complementary and Alternative Medicine

The commission has published a summary of key themes from the feedback it received from its Consultation on Complementary and Alternative Medicine, which ran between March and May 2017, as part of a review of how it decides whether organisations that use or promote complementary and alternative medicine (CAM) therapies are charities: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670555/The_use_of_complementary_and_alternative_medicine_Feedback_2017.pdf

The commission received more than 670 written responses to the consultation, which it said was far in excess of the number usually received for a commission consultation. It also held two discussion events for organisations with a particular perspective on the issues.

Given the high number of responses, and the amount of detail in some of them, the commission says it has taken longer than anticipated to analyse the responses. The commission is continuing with its review of existing policy in respect of the registration of CAM organisations as charities. That review will result in a decision as to whether the commission's current approach to CAM should be changed, and if so, what changes should be made. The responses received to the consultation will be considered as part of that review, in conjunction with other information, assessed against the legal framework governing charitable status.

Updated Regulatory and Risk Framework

The commission has published this new document, replacing the previous Risk Framework: <https://www.gov.uk/government/publications/risk-framework-charity-commission>

The significant changes to the body of the document are:

- there is a greater emphasis on the importance of understanding risk in the charity sector;
- there is a slightly stronger emphasis on the commission's proactive regulation;
- there is a greater emphasis on the nature of the commission as a public body, the importance of best regulatory practice, and on the commission's own objectives; and
- the revised wording demonstrates a greater stress on the importance of trusteeship.

The Annex (now Annex 1, and now found on the landing page, rather than in the main document) has been amended with the addition of new 'priority regulatory risk issues' under each of the following headings:

- **Fraud and financial abuse** – Fraud and other financial abuse of charities (including abuse arising out of conflicts of interest), including money laundering.
- **Safeguarding** – Serious harm to, and the abuse of, children or adults in connection with a charity and/or the failure by a charity that works with or has regular contact with children or adults at risk to have adequate and effective safeguarding policies and procedures in place. Lack of registration with another regulator where that is required has been added as a potential risk indicator to this category.
- **Terrorism and extremism** – Misuse of a charity for terrorist purposes or to promote extremism (including charity links with or support for terrorism, financial or otherwise, and/or connections to a proscribed or designated organisation, person or entity).
- **Public trust and confidence** – Other significant breach of trust, non-compliance or decisions made

by charity trustees that significantly affect public trust and confidence in charity. Conflicts of interest not being managed correctly has also been added as a potential risk indicator under this heading.

Charity Tribunal

In the First Tier Tribunal (Charity), a trustee of the charity Jole Rider Friends, Mr Swettenham, was unsuccessful in his appeal against orders made by the Charity Commission restricting transactions through the charity's main bank account and an associated bank account at Lloyds Bank, and restricting the use of its credit card without the Charity Commission's prior authorisation: <http://charity.decisions.tribunals.gov.uk/documents/decisions/Decision%2010%20January%202018.pdf>

Mr Swettenham and his partner have been the only trustees of this unincorporated charity for most of its existence and have been paying themselves for acting as directors without authorisation for such payments under the charity's constitution or by the Charity Commission. The commission's view is that there has been unauthorised remuneration to the two trustees totalling approximately £200,000. The commission therefore opened a statutory inquiry and made the two orders as temporary protective measures as it was concerned that Mr Swettenham and his partner would continue to pay themselves.

No appeal was lodged against the opening of the inquiry itself; this appeal against the orders required the tribunal to 'consider afresh' the commission's decision to make them. In doing so, the tribunal was able to consider evidence that has become available subsequent to the making of the orders.

The tribunal refused the appeal on the basis that it was satisfied that the commission's orders represented a proportionate response to the situation the charity was in, by preventing unauthorised expenditure, but allowing for legitimate expenditure.