

Faith-based Organisations

2023 Update



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Welcome



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In this update

Welcome to our annual faith-based update.

In a volatile and uncertain world, faith-based organisations bring hope, stability, community and compassionate service to many. But they are not immune to the pressures from the cost-of-living crisis we're experiencing. In this update, we explore some options for supporting staff when funds are tight, through innovative approaches in employment practices and staff hardship funds.

We also look at the second tranche of changes introduced by the Charities Act 2022 that is now in force. The hope is that these changes will make it easier for charities to release income and alleviate cost burdens.

At Bates Wells, we seek to build a culture where people of all faiths and none can thrive and feel comfortable sharing and learning from others how faith can affect our daily lives and sense of identity. We're delighted to share some personal reflections from Augustus Della-Porta on Bates Wells' first Iftar, and on our Muslim colleagues' recent experiences on pilgrimage to Mecca and Medina.

Our immigration team often works with faith-based organisations on issues such as supporting ministers of religion to come to the UK, as well as helping religious orders that live in community. We share the story of a group of Buddhist women – Triratna Buddhist Order – in our client update.

Our case reviews highlight several recent Charity Commission statutory inquiries relating to governance failings in faith communities. We often find churches, mosques and other worshipping communities tend to see their primary identity as a faith community. This can mean they overlook how charity law and good governance principles apply to them – these cases provide a salutary reminder.

Faith groups often have questions around the boundaries of their responsibilities to keep people who are in contact with their organisation safe. We explore a case involving a historic sexual assault claim, where a religious organisation was found not liable for acts committed by one of its former elders, and also explore proposed legislation requiring organisations that operate public premises to mitigate the risk of potential terrorist attacks.

We hope you enjoy this update and find it informative.

Get in touch

As ever, we'd love to hear from you if you have topics or issues you would like us to cover in an upcoming seminar or masterclass. Your feedback and suggestions are greatly welcomed and valued. If you have any thoughts or ideas, please feel free to email Stephanie.



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Faith-based team

Our faith-based organisations team draws on expertise from across the firm to advise you on the wide range of legal and regulatory matters you encounter.

We advise charities and places of worship linked to many faiths. They include several different Christian denominations, as well as Hindu, Muslim, Jewish and Buddhist communities, along with interfaith and umbrella organisations.

Many of our team have personal links with the faith communities we advise. We provide sensitive and practical advice that helps you to uphold your faith values while staying compliant with the law.

Find out more about our team and read previous updates on [our website](#).

Keeping your staff happy when funds are tight



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“Bringing colleagues together to celebrate – particularly if you supply food – is a great way to engender goodwill and boost morale”

With the impact of the cost-of-living crisis and galloping inflation making it ever more difficult for employers to award staff meaningful pay rises or bonuses, employers are increasingly thinking about innovative ways to motivate and retain employees. In this article, we suggest possible ways of incentivising staff that may be particularly relevant to faith-based organisations. At Bates Wells, we have introduced each of these suggestions and have found them very successful in helping to make our staff feel valued and rewarded in meaningful ways that align with our shared values.

1. Extending holiday allowance

Offering employees an additional day of holiday, especially if it is not simply one more day added to their existing annual leave entitlement but is tied to a special event (such as the employee’s birthday), is very popular with employees. This may have a cost for employers if they need to arrange cover for the role. In a faith-based organisation, the additional day could potentially be offered for a personal celebration or observance, including a religious one. For many employees, having an additional day of holiday would in reality mean that they complete their usual work tasks in less time during the relevant week. Even if they achieve slightly less in that week, the longer-term win is that the extra day’s holiday is likely to be very motivating for employees and a welcome perk.

2. Giving employees paid travel time for travelling responsibly

Many employers who are starting to consider policies of this kind do so from a climate perspective, which is obviously the primary drive. However, this policy is likely to fit particularly well with the values of faith-based organisations. Such policies could enable staff members to claim paid 'journey time' if they travel by train or bus rather than by car or aeroplane and as a result their journey takes longer. As above, this potentially brings some direct cost for employers but it has the double benefit of both being an attractive benefit to staff and promoting responsible travel. For more information, check out [Climate Perks](#).

3. Giving a small financial recognition award – which staff can be invited to donate to a charity of their choice

It is widely recognised that many staff find it very motivating simply to be thanked and recognised for their work, even if this does not directly feed into an increase in pay or a promotion. Making small financial awards of, for instance, £10 or £25 can go a long way to make employees feel valued by their employer, if coupled with a tailored message of appreciation for a specific task they have done or quality that they have demonstrated. In some organisations this is awarded in the form of a voucher to be spent with a responsible supplier from a

list provided by the employer, or with an invitation to designate it as a charitable donation. This model could easily be tailored to a faith-based organisation's networks.

4. Setting up a payroll giving mechanism under which staff can directly donate to their chosen charity/charities

The advantage of payroll giving is that it is tax efficient for employees as the donation is made from salary before tax (but after National Insurance Contributions have been deducted). From the employer's perspective you will need to work with a Payroll Giving Agency, who may charge an administration fee. This is generally deducted from the employee's donation, but you can elect to pay it yourself. All charities are eligible to benefit from payroll giving as long as they are recognised by HMRC, so there is significant scope for giving to a range of charities aligned with employees' faith and values.

More information about this mechanism is available here: www.gov.uk/payroll-giving

If you already have such a mechanism in place, is there more that can be done to promote it internally and to encourage employees to see it as a benefit and make use of it?

5. Bringing staff together to celebrate important faith occasions

This is an obvious step, and one which many faith-based organisations already do. Sometimes there may be a perception that faith celebrations are more for families and local communities than for the workplace. In our experience however, bringing colleagues together to celebrate, particularly if you provide food for the event, is very powerful in engendering goodwill and strong morale. For more on this, please see our article on [page 22 \(Personal reflections: An Iftar in the workplace\)](#).

Do ensure, of course, that if there are staff members who do not share the faith in question they know they are invited to the event and that it is not exclusionary.

“It is widely recognised that many staff find it very motivating simply to be thanked and recognised for their work”



Setting up a staff hardship fund



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“Hardship funds can help to alleviate stress, improve wellbeing, and foster loyalty from existing employees”



The continuing cost-of-living crisis (hot on the heels of the pandemic) has seen many households put under immense pressure as basic energy and living costs have spiralled upwards. **Research** shows that nearly three million adults in the UK have looked to churches and other religious organisations for basic amenities as well as ‘warm banks’ – though the real number may be significantly higher.

Some faith-based organisations and churches have chosen to establish a staff hardship fund as an effective way of supporting employees experiencing financial difficulties, as well as their families and, in some cases, former employees. A great example is the £3 million fund set up by the Church Commissioners in May 2022 to ‘boost the stipends of struggling clergy’. It also supports lay workers employed by the diocese or parishes (such as youth and children’s workers), who have been able to apply directly to their diocese for grants to support them and their families.

More generally, research shows that staff hardship funds can help to alleviate stress, improve wellbeing and productivity, and foster loyalty from existing employees – so there is a clear logic for employers in considering them.

Charitable staff hardship funds

While it is not usually lawful for a charity to have a 'beneficiary class' that is connected by employment, there is an important exception for charities that seek to 'relieve or prevent poverty'. This was confirmed by the Upper Tribunal in the case of **Her Majesty's Attorney General v Charity Commission for England and Wales and others (2012)**.

In operating a charitable staff hardship fund, it's important to make sure that funds are directed appropriately for the 'relief or prevention of poverty' in a charitable sense. This usually requires careful means testing of those to be supported, such as putting in place appropriate eligibility criteria and financial thresholds. In practice, these funds are used to help with basic costs such as rental payments and food, but they can also be used for associated things like debt relief advice.

If the employer is a charity with objects that already include the relief or prevention of poverty with a sufficiently wide beneficiary class, it may be possible to establish a 'restricted fund' within the existing charity. Otherwise, the charity may want to consider widening its objects.

For non-charitable organisations, it might be possible to provide hardship funds for employees and dependants through their associated charitable corporate foundation if they have one (noting the tax caveat below). Alternatively, they could consider using a donor-advised fund, establishing a new charity or even partnering with an existing charity that agrees to house and distribute the hardship fund for them.

Tax issues

Whichever option you choose, it will always be crucial to consider the tax arrangements and status and whether funding can be made available to the beneficiary class tax efficiently.

For example, setting up a hardship fund within an existing charity is likely to prove problematic from an HMRC perspective when it comes to making grants to employees – even if it has a wider beneficiary class than just employees – because HMRC may treat them as 'general earnings', subject to deductions of PAYE and NICs. For an employer to argue that such treatment ought not to apply, it would need to demonstrate that the payment does not arise due to the employment relationship – this will be difficult in practice.

Arguably, the safest way to establish a tax-efficient staff hardship fund tends to be via a separate charity outside of the employer's group, with independent trustees. This is because the employment link will be clearly severed and decisions on who should receive support can be made (and seen to be made) on a truly independent basis.

Alternatives to staff hardship funds

We are aware that for some organisations 'financial relief' arrangements may only be required on a short-term basis and at a scale that probably won't justify the costs of setting up and administering a charitable hardship fund. Alternative means of support could include making one-off payments or grants to certain employees (which would be taxable) or providing specific services or benefits-in-kind at a discount or possibly free of charge (for example, food and goods vouchers, or transport costs for staff).

It is also worth noting that an employer is able to provide some 'trivial' benefits to employees on a tax-free basis. These are typically limited to £50 a month, but it is possible for (unlimited) free meals to be provided by an employer too, which can be an appealing way to provide practical (and tax-efficient) support to staff.

Need advice?

If your organisation is considering setting up a new staff hardship fund or if you are in doubt about the taxable status of a proposed or existing staff hardship fund, please **get in touch**. We would be delighted to make sure that you receive the practical and bespoke legal and tax advice that you need to make your hardship fund a success.



Charities Act: Summer 2023 Provisions



Livia Velicu

Associate

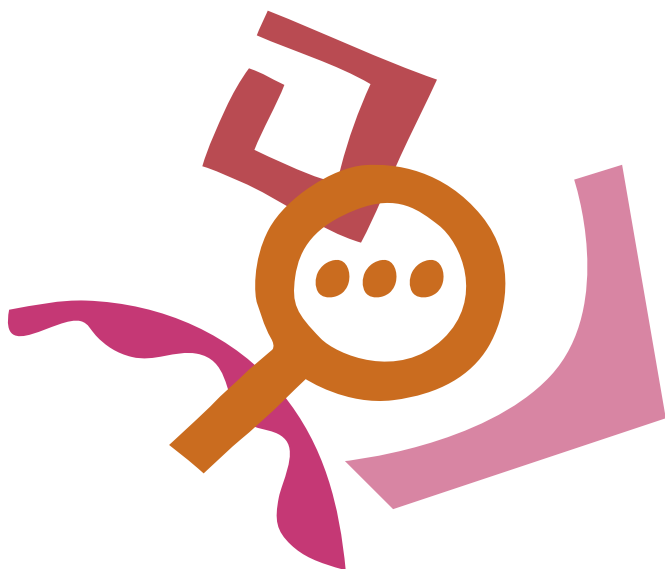
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“Changes to the permanent endowment rules may allow you to spend out funds more easily to reach beneficiaries and advance your faith”

Big news for all in the charity sector over the past year has been the changes introduced by the Charities Act 2022. The first tranche of changes came into force in October 2022, with the second tranche becoming effective on 14 June 2023. Some of these changes may well be helpful for faith-based organisations and other charities working to release income and alleviate cost pressures, especially at a time when the cost-of-living crisis means charities, and the assistance they provide, are needed more than ever.

A variety of changes came into force in June, particularly in relation to charity land and permanent endowment – if you would like full details of all the changes, please see this [summary](#) on Bates Wells’ website. Here, we take a deeper dive into the changes that are likely to be most relevant for faith-based organisations.



Permanent endowment

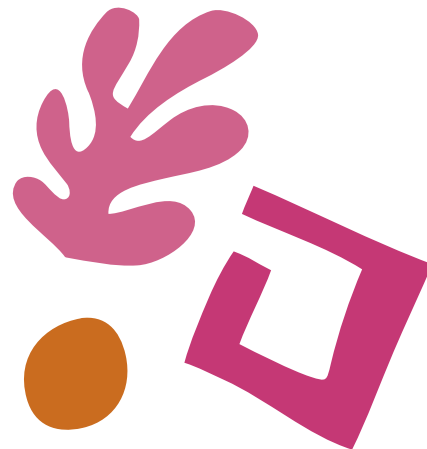
Permanent endowment is property charities must retain, spending only the income and not disposing of the value of the asset itself. For example, a pot of money given to a church to be invested, with only the income from the investment permitted to be spent on maintenance of the church building, is likely to be permanent endowment. Under the previous regime, charities wishing to spend permanent endowment could use a statutory power to remove the restrictions on spending the capital. However, spending funds with an income of more than £1,000 a year and a market value of more than £10,000 required Charity Commission consent.

Under the Charities Act 2022 changes, charities will no longer need to consider the level of income when determining if commission consent is required to use the statutory power. The market value threshold has also been increased – funds with a value of £25,000 or less can be spent out using the statutory power without the need to get commission consent. This should alleviate the cumbersome administrative (and cost) burden on charities of obtaining Charity Commission consent to spend out relatively small sums. Helpfully, if charities do still require commission consent, the time limit

for its response has been reduced from three months to 60 days – so everything should move more quickly.

What does this mean for faith-based organisations?

Due to the nature of faith-based organisations' work and roles within the community, many faith-based charities will (perhaps in the past) have been left a permanent endowment fund. Due to the evolving need of local communities, you may feel that these funding pots could be better used by being spent down to further your charity's mission. The changes to the permanent endowment rules may allow organisations to spend out permanent endowment funds more easily, ensuring beneficiaries can be reached, and faith advanced, in ways your trustees may consider more meaningful in the current climate.



Disposing of charity land

The Charities Act 2011 contained restrictions intended to safeguard charity property and ensure any disposals were on the best terms that could be obtained by the charity. It provided a clear framework for charities to inform any decision-making related to the disposal of charity land.

However, it had been criticised – the advice charities needed to obtain could be disproportionately detailed when dealing with a straightforward, small transaction, for example.

The June changes are intended to give charities greater flexibility, better catering for the spectrum of property transactions that take place in the charity sector. The pool of advisors charities can select from is now wider – advisors need no longer be a member of the Royal Institution of Chartered Surveyors. Instead, you should be able to obtain advice from a broader category of ‘designated advisors’, including fellows of both The National Association of Estate Agents and The Central Association of Agricultural Valuers as well as qualified charity trustees, officers and employees. In addition, the requirements of the advice that must be obtained have been simplified.

What does this mean for faith-based organisations?

Charities will have greater flexibility and will be able to choose a cost-effective and appropriate advisor, based on the nature of the transaction. This does create greater responsibility, however – your organisation will need to ensure that the advisors you select are suitable and able to give you advice appropriate to the circumstances.

Charity names

Many faith-based organisations (and charities generally) use a ‘trading’ or ‘working’ name – a brand name, or name that the charity uses day to day that is different from its legal name. The commission has the power to direct a charity to change its legal name, but changes introduced by the Charities Act 2022 include providing the Charity Commission with powers to direct a charity to change its working name too, if it is too similar to another charity’s name or is misleading, for example.

Should you have any queries on the Charities Act 2022 and what it means for your organisation, please do **get in touch**.

Triratna Buddhist Order

Dharmacharini Karunadhī

Chair of the charity board

GUEST FEATURE



Members of the Triratna Buddhist Order

Photo credit: Triratna Buddhist Order

We are a community of seven ordained Buddhists (also known as Dharmacharinis) living together, running retreats and taking care of Tiratnaloka, our retreat centre in the peaceful town near Brecon, Powys in Wales. As a group, we explore Buddhist texts and the teachings of Sangharakshita, and study the Dharma to deepen our practice and render it more effective. We practice in a lineage or tradition that was founded by Sangharakshita who founded the Triratna Buddhist Order.



Our story started in 1992, when five women – Samata, Dhammadinna, Anjali, Anoma and Sanghadevi – got together and decided to create a retreat centre for women who had asked for ordination. We registered a charitable trust called Triratna Sarana for our retreat centre and ordination training. At that time, there were very few women in the Order – less than 100 – and it was taking women a long time to become ready for ordination.

Since our modest beginnings, the number of Dharmacharinis has grown from around 100 to more than 870. It has been a long and difficult road to get to where we are today, but we believe that the work we have done at Tiratnaloka has played a significant part in this growth. We also believe that we continue to have an important role to play in training, both leading up to ordination and beyond.

Tiratnaloka retreat centre has now been running for 29 years. It supports women who wish to be ordained into the Triratna Buddhist Order. Tiratnaloka has a rich history of being a women-only space, including trans women. The themes of our retreats at Tiratnaloka cover the essential principles on which the Triratna Buddhist Order is based.



Members of the Triratna Buddhist Order at their retreat centre, Tiratanaloka

Photo credit: Triratna Buddhist Order

We are also keen to make our retreat centre as environmentally sustainable as possible. Our heating comes from a wood pellet boiler, with only the retreat centre kitchen requiring gas, and we use a green electricity supplier. We recycle as much as possible, buy Fair Trade whenever possible, and all cleaning products are ethically sourced.

We believe that the training we deliver at our Tiratanaloka retreats is fundamentally a training in confidence. Confidence in our Order, which is based on Sangharakshita's vision, and confidence in the Buddha Dharma and our ability to follow it effectively. Our Order is based on traditional teachings that are finding modern forms, relevant to us as contemporary practitioners, wherever in the world we may live. In Sangharakshita's vision of a 'new Buddhist

movement', the age-old Buddhist practices of study and meditation are held within a broader mandala of themes: friendship, ethics, teamwork, art, altruism, devotion and the mythic dimension of spiritual life.

In early 2022, we began recruiting for the role of Junior Ordination Team Member to assist with our ever-growing Order. This person is mainly responsible for being part of a team leading retreats and offering Kalyana Mitrata (spiritual friendship) to women training for ordination, helping women mitras (friends) in their preparation to become members of the Triratna Buddhist Order. The most suitable candidate was a German national and we realised that we would need a sponsor licence to sponsor the individual.

Aisha Choudhry from Bates Wells was recommended by our friends in another Triratna centre, and we began the process of obtaining a sponsor licence. We would not have been able to get the license without the support of Bates Wells. Aisha was very professional and supportive, which was particularly important for a complex, specialised situation such as ours.

Having a sponsor licence allows for a commonality of approach in our international movement, even though we are independent centres. We are delighted to have the sponsor licence because it means that our team can grow. We are able to run at full capacity and in a sustainable way, and can support individuals attending the retreats. As we are an international movement, it also means we have greater diversity on the team, which will make a difference to people attending our retreats.

Our vision for the future is to continue to support practitioners to deepen their practice and become Dharmacharinis, which means followers of the Buddhist way.

To find out more about Tiratanaloka, please go to <https://www.tiratanaloka.org.uk>



Aisha Choudhry

Senior Associate

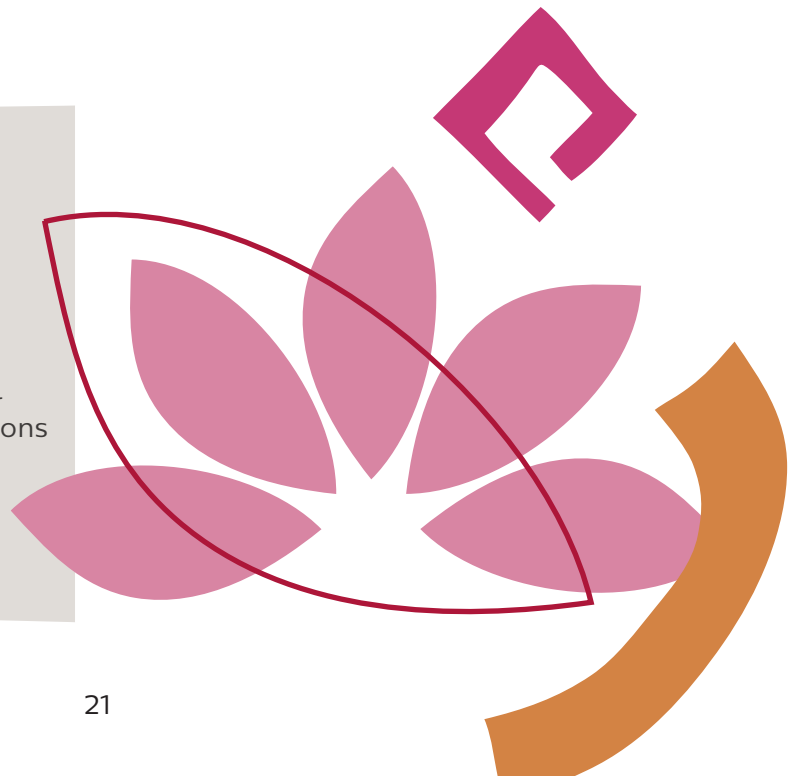
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Our Immigration team is experienced in all aspects of advising faith-based organisations on your specific requirements, with advice tailored to your faith values.

Get in touch with the Immigration team

“Having a sponsor licence allows for a commonality of approach in our international movement, even though we are independent centres”



Personal reflections: An Iftar in the workplace



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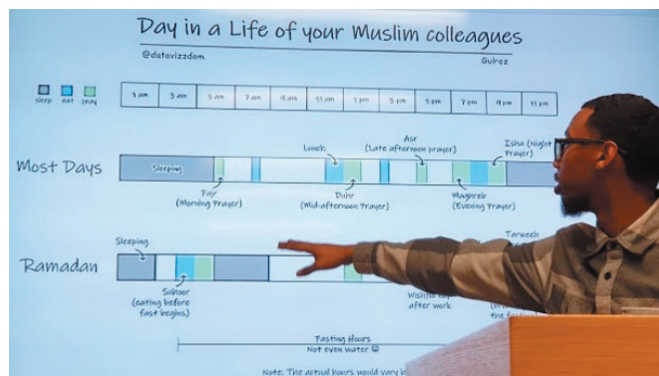
This year we were delighted to hold our first firm Iftar during the month of Ramadan.

Ramadan is the holiest month for Muslims, when the Qu'ran was first revealed to the Prophet Mohammad. During this time many Muslims find peace and happiness in coming closer to God and observing the limits set for them during Ramadan – this includes fasting (no food or drinks – not even a sip of water!) during daylight hours and decency in all actions. There is also an increased focus on prayer, with special prayers late at night, and a particular focus on prayer in the last 10 nights of Ramadan, reciting the Qu'ran and giving to charity.

The fast starts from sunrise and ends at sunset when Muslims break their fast with the 'iftar', traditionally with water and dates to start with, followed by all manner of food, and are often communal affairs with extended family and/or friends.

Around 50 of us gathered in the office at 6.30pm to hear from our colleague Ahmed, who gave us a beautiful presentation on what Ramadan means for Muslims and to him personally.

We then had two guest speakers – my colleague, Aisha, interviewed Julie Siddiqi MBE, founder of Together We Thrive, an interfaith campaigner and regular Thought for the Day presenter who talked about her work and gave some perspectives on Muslim communities. We were then treated to some poems and reflections from renowned Sufi poet Paul Abdul Wadud Sutherland, with some time for a Q&A at the end. Two of our colleagues, Mona and Safia, gave us an overview of the iftar and how it works – listening to the athan, or call to prayer, before breaking one's fast. Everyone



Ahmed sharing a graphic illustration of a day in the life of Muslim colleagues during Ramadan

then went through to the kitchen, where a veritable feast of Asian and Middle Eastern food and drinks was laid out and enjoyed by all.

It was very touching that so many colleagues stayed behind to break the fast with us, waiting until nearly 8pm before they ate, especially those colleagues who joined us in fasting on the day. It was a real team effort to organise this event – with particular thanks to Ahmed, Aisha, Mona, Safia and Warda.

Umrah outside the workplace

Aisha, Ahmed and I all happened to go on Umrah (pilgrimage) to Mecca and Medina this year (at different times!)

It was the most amazing experience, and extra special going with my family and being the first time for all of us. We went with a group led by a remarkable teacher who pushed us all to make the most of every moment.

We first went to Medina, where the Prophet lived and where his tomb lies. I have never felt such peace and tranquillity as when, early in the morning, I was sitting close to

where the Prophet used to lead prayers, surrounded by, and praying alongside, fellow Muslims from every part of the world. Other amazing moments were walking to the Quba Mosque outside Medina, knowing that you were following in the Prophet's footsteps, and our trip to Uhud, where through our Sheikh we relived the battle that took place there.

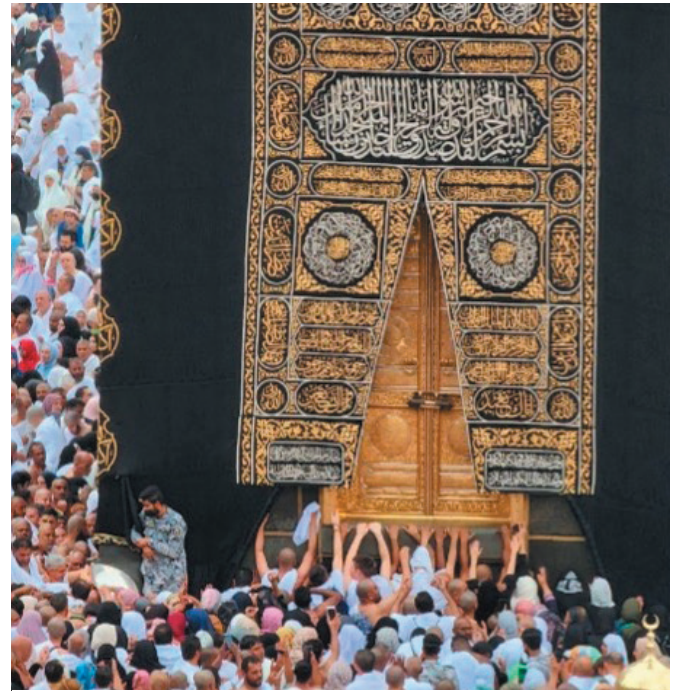


Augustus in Mecca wearing his ihram clothing

After those amazing five days in Medina, we travelled down to Mecca to do the actual Umrah. We travelled to Mecca, my son and I wearing our ihram clothing (donning nothing but two pieces of cloth), and then, with the rest of the group, made our way to the Grand Mosque. Joining thousands of others, similarly dressed in our two pieces of cloth, all equal before God, we chanted prayers together and made our way to the centre of the mosque.

Nothing could have prepared me for the intensity of seeing the Ka'bah for the first time – I think I must have stood there with my mouth open in awe for a fair few seconds! After going around the Ka'bah seven times, my son and I then did the Sa'ee, following in the footsteps of Prophet Ibrahim's wife Hajar, who ran seven times between the hills of Safa and Marwa in search of water for her son Prophet Ismail. This was such a special experience, especially as we had been fully prepared by our Sheikh on how to make the most of this experience, but doing this together with my son took it to another level. We then completed the Umrah with a haircut.

The trip was truly a lifechanging experience – I feel a part of my heart is still in Medina and Mecca and have a deep yearning to return as soon as possible.



The Grand Mosque in Mecca

“Medina was beautiful – especially seeing Medina and the Prophet’s Mosque (PBUH) for the first time. The people were very welcoming and caring and we naturally felt right at home. Day after day, we were blessed with the privilege of deepening our knowledge and understanding of our religion. This really helped and benefited me a lot and prepared me for the journey to Mecca where we would embark on our spiritual pilgrimage, Umrah.”

Ahmed Mohamoud, Business Team

Round-up of cases



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Statutory inquiries into charity misconduct and mismanagement

During 2022 and early 2023, the Charity Commission conducted a series of statutory inquiries into the activities of various faith-based charities. These cases provide us with a revealing insight into the poor governance behaviours that charity trustees can commit. They also highlight those circumstances when the commission will step in to ensure the charity concerned is restored to the path of good governance. Sadly, this is not always possible – we give two examples below where the commission or the High Court decided it was best for the relevant charity to be wound up.

The Olive Grove Foundation

This is an interesting case that involved an application by Mr Bhaiyat for a review of the Charity Commission's decision to open a statutory inquiry into the Olive Grove Foundation (the 'Foundation'). Mr Bhaiyat was a trustee of the Foundation, an unincorporated body with purposes to help people affected by poverty, wars or natural disasters anywhere in the world.

Mr Bhaiyat argued that the commission's decision to open an inquiry was motivated by factors such as prejudice, bias and improper motives against him and against Muslim charities generally operating in certain parts of the world. The First-tier Tribunal was clear that it was not the appropriate forum to pursue such allegations and that such matters were properly for determination by the High Court on an application for judicial review – possibly as a class action by Muslim charities.

The role of the tribunal was to decide if the commission's decision to open an inquiry was one that no reasonable decision-maker would have made. It also considered whether it was proper for the commission to make an Order restricting the Foundation

from entering certain specified transactions without its prior approval.

The commission argued that its inquiry was properly opened due to the various concerns it had about the Foundation, which included poor governance, poor monitoring of the end use of charitable funds and the use of a personal bank account to transfer money overseas. These concerns had a cumulative effect that led to the commission's decision to open its inquiry.

The tribunal did find some evidence of mismanagement on the part of Mr Bhaiyat, but did not find overwhelming evidence of misconduct or mismanagement. Interestingly, the tribunal found that up to 80 percent of the commission's listed concerns were not of legitimate concern. However, the Foundation had filed its accounts late in four successive years and gave no satisfactory explanation. This represented a clear governance concern and non-compliance by the Foundation's trustees with a basic legal duty. This, in itself, justified the opening of the inquiry.

The tribunal noted that the statutory threshold to justify opening an inquiry is a low threshold. In this case, the tribunal was more than satisfied that the threshold had been met and did not consider the opening of the inquiry something that no reasonable decision-maker would have done.

The tribunal viewed the making of the Order as necessary to protect the funds of the Foundation. This did not prevent Mr Bhaiyat, on behalf of the Foundation, continuing the work and activities of the Foundation (subject to seeking approval for certain expenditure of funds from the commission) and it did not, or would not, have impeded the growth of the Foundation. Mr Bhaiyat decided not to seek any such approval and assumed that approval would not be granted, even though a right of appeal to the tribunal would accrue if approval was refused.

[Click here for the full decision](#)

The Everlasting Arms Ministries

The Everlasting Arms Ministries (the 'Everlasting Arms') is a charitable company established for the advancement of the Christian religion and the relief of poverty worldwide. In 2016, the Everlasting Arms sold its main asset, a property on the Old Kent Road, for £8 million. The Charity Commission had concerns about whether the disposal had complied with charity law and how it had been recorded in the charity's accounts. The Commission opened a compliance case and its early investigations into the Everlasting Arms' books and records raised several

concerns in relation to financial matters, management of conflicts of interest and poor overall governance. The seriousness of these concerns led to the opening of a formal statutory inquiry in 2019.

The inquiry found that the Everlasting Arms had failed to keep sufficient documentation concerning its financial planning and budgeting – this in itself was evidence of poor financial management. Due to a lack of proper record keeping, the Everlasting Arms was unable to demonstrate that all its funds had been properly spent solely for its charitable purposes. For example, in relation to its donations to overseas partners, the trustees failed to keep a proper audit trail and records detailing both the donation and how the money was used. Similarly, the Everlasting Arms lacked documentation when it came to a decision to increase salaries. No benchmarking had been documented, nor had any other research been undertaken to arrive at the new salary levels.

The commission's investigations also revealed poor governance practices that were regularly in breach of the charity's governing document. Multiple significant decisions were made at inquorate meetings. The Everlasting Arms was able to demonstrate that it managed conflicts of interest by individuals absenting themselves from trustee meetings for

relevant decisions, but the record keeping in relation to those meetings was consistently inadequate. They also failed to keep a conflicts of interests register, and didn't have a conflicts of interests policy. The commission intimated that good governance amounts to more than merely absenting conflicted trustees from relevant decisions. Instead, a charity should seek to maintain proper decision-making policies and to keep thorough documentation of decisions made.

The findings of the inquiry make it clear that trustees must ensure proper systems and controls are put in place and that proper records are kept to monitor and demonstrate the legitimacy of their decisions, especially decisions related to charitable funds.

Ultimately, in this case, the trustees fully complied with the commission's Action Plan and the commission was satisfied that the Everlasting Arms was on a road to better management.

[Click here for the full decision](#)



Rhema Church London

Rhema Church London ('Rhema') operated an evangelical church in Croydon and its objects were 'the advancement of the Christian religion' and other charitable purposes. In 2014, a whistleblowing report raised concerns about Rhema's governance. There were concerns that the trustees had failed to follow regulatory guidance previously provided by the commission in October 2012. This led to a statutory inquiry being opened in 2015 and ultimately resulted in Rhema being removed from the register of charities and the entity itself being wound down.

One of the prevalent issues during the inquiry was the financial behaviour of the senior Pastor (Mr Phelps), and the trustees' failure to properly oversee his spending. The inquiry found that Mr Phelps made unauthorised use of Rhema's credit cards and went on unauthorised overseas trips. Even when Rhema did organise overseas trips with Mr Phelps, the inquiry found little evidence as to the charitable purpose of these trips, and there was no evidence that Mr Phelps sought or received authorisation from the trustees to spend charitable funds on the trips. As a result of the inquiry, Mr Phelps was first suspended and eventually dismissed for breaking the terms of the suspension.

The inquiry concluded that the trustees' failures amounted to misconduct and mismanagement on several accounts. They were found to have a history of late filing of accounts, and they consistently failed to comply with their statutory duty to file accounts within 10 months of their financial year end. Changes were recommended by their auditor in a qualified opinion presented to the trustees, but they failed to implement these changes, which, in the view of the inquiry, also amounted to misconduct in the administration of the charity.

The inquiry revealed a significant lack of financial policies and procedures. An Interim Manager was appointed and new policies introduced, but those policies were not adhered to by senior staff. This ultimately contributed towards a significant tax liability to HMRC of over £540,000, which was paid out of Rhema's assets. This was clear evidence of the trustees' failure to discharge their duties to manage the charity's resources responsibly.

Unlike the case of the Everlasting Arms Ministries above, the trustees failed to address the issues outlined by the Charity Commission, Interim Managers and auditors, and the decision was taken to remove Rhema from the register and wind it down.

[Click here for the full decision](#)

Ethiopian Orthodox Tewahdo Church St Mary Tsion

Ethiopian Orthodox Tewahdo Church St Mary Tsion ('Tewahdo') was removed from the commission's register of charities on 27 March 2023 following a statutory inquiry and a High Court decision. Tewahdo ran a church in Battersea and its objects were to 'propagate the Gospel of Christ' and 'the Charitable Work of the Ethiopian Orthodox Church of St. Mary of Debre Tsion'.

The Charity Commission opened an inquiry in October 2014 in relation to a 'religious schism' within the charity. The schism had created such deep tension that there were two rival factions within the charity, each of which claimed trusteeship and management of Tewahdo. These disputes were so deeply entrenched that the charity's finances, governance, operation and provision of services to its beneficiaries were all disrupted.

As the commission cannot determine trusteeship (only the courts can), the commission authorised an application for charity proceedings that was submitted by one of the factions. The inquiry remained open during the court proceedings, but the commission did not exercise any of its

powers while the court process took place. In April 2018, the High Court gave its judgment and named interim trustees who were directed to form a new Charitable Incorporated Organisation (CIO) and transfer the assets of Tewahdo to the CIO. This transfer took several years due to delays caused by the trustees' failure to action the transfer. In September 2022, the inquiry decided it was necessary and proportionate to direct the trustees to sign the transfer documents. By January 2023, the inquiry finally received confirmation that the transfer had taken place and Tewahdo was then removed from the register.

The commission's view was that it was not proportionate to attempt to investigate the history of the administration of Tewahdo. Rather, it was important that all parties concerned looked to the future to ensure the new CIO was run successfully for the public benefit and for its beneficiaries.

[Click here for the full decision](#)



Recent court decisions involving faith-based charities

The scope of employer's vicarious liability

This is sadly a disturbing case that involved the rape in 1990 of Mrs B, a member of the Barry Congregation of Jehovah's Witnesses, by one of the Congregation's elders, Mr S. The assault took place at the elder's own home after he and Mrs B had been out evangelising together.

In 2014, Mr S was convicted and sentenced to 14 years' imprisonment. By this time, he had been expelled as a Jehovah's Witness for unrelated conduct and Mrs B had ceased her association with the Jehovah's Witnesses.

In 2017, Mrs B brought a claim for damages for personal injury, including psychiatric harm, against the Watch Tower and Bible Tract Society of Pennsylvania (a charitable corporation that supports the worldwide religious activities of the Jehovah's Witnesses) and the Trustees of the Barry Congregation. She claimed they were responsible in law (or 'vicariously liable') for the rape because of the nature of their relationship with Mr S and because of the connection between that relationship and the commission of the rape. Both the High Court and the Court of Appeal found in Mrs B's favour.



The trustees appealed to the Supreme Court in early 2023. When applying the two-stage test for vicarious liability, the Supreme Court firstly looked at whether Mr S's relationship with the Jehovah's Witnesses was one of employment or 'akin to employment'. The court found that it was. As an elder, Mr S was carrying out work on behalf of, and assigned to him by, the Jehovah's Witnesses; he performed duties which were in furtherance of, and integral to, the aims and objectives of the organisation; and there was a process for being appointed and removed as an elder.

The Supreme Court then looked at whether there was a sufficiently close connection between the wrongdoing and the employment. The High Court and the Court of Appeal had both wrongly relied on factors that had no relevance to vicarious liability. The Supreme Court held that Mr S had not committed the assault while carrying out his activities as an elder, but while at his own home when he was not exercising control over Mrs B because of his position as an elder. Mrs B was in Mr S's home because of her close personal friendship with him and because of her desire to offer him emotional support. Moreover, the assault was not an objectively obvious progression from what had gone before; it was a shocking one-off attack. Accordingly, the 'close connection' test was not satisfied.

Rob Oakley, Partner in our Dispute Resolution Team, comments:

'This is an interesting case in which the Supreme Court overturned the decision of the High Court and confirmed there is no justification for extending the boundaries of vicarious liability such that an organisation will not be held liable merely because it has deeper pockets than the perpetrator.'

'The test for vicarious liability will still be whether the relationship between the organisation and perpetrator was one of employment, or akin to employment, and whether the "close connection" test applies: that is, whether the wrongful conduct was so closely connected with acts that the perpetrator was authorised to do that it can fairly and properly be regarded as done by them while acting in the course of their employment or quasi-employment.'

[Click here for the full judgment](#)

Our **Dispute Resolution & Litigation team** deals with the full spectrum of claims in negligence for personal injury, from historic abuse claims to contemporary claims and those which involve life-changing injuries. If you need advice in this area, please **get in touch** with a member of our team.

Breach of the Equality Act

On 24 October 2022, it was ruled by the Sheriff of Glasgow that Scottish Event Campus Limited (SEC) had discriminated against the Billy Graham Evangelistic Association (BGEA) on the basis of the protected characteristic of religion after the SEC cancelled BGEA's letting of the SSE Hydro Arena in Glasgow.

The BGEA, registered with the Charity Commission for England and Wales, has objects including supporting and extending the worldwide evangelistic mission of the Billy Graham Evangelistic Association based in the US. The charity and SEC had agreed that the BGEA would hire the Arena on 30 May 2020 for an evangelistic event that would be non-ticketed and open to the public. The key speaker was to be Franklin Graham, a contentious American evangelist and son of the late Billy Graham (also an American evangelist).

There was growing opposition to the event in the press and social media. Glasgow City Council (the majority shareholder of SEC) also expressed concerns to SEC that Mr Graham could make homophobic and Islamophobic comments during his public speaking engagements. Due to this pressure

from various objectors, SEC wrote to the BGEA cancelling the event. The charity challenged this decision in court.

The Sheriff found that the event was cancelled because of the religious beliefs of the BGEA and Mr Graham, and because of the reaction by others to those beliefs. By terminating the agreement, SEC directly discriminated against the BGEA as it treated it less favourably than it would have treated others. SEC had hosted other religious events at the Arena, but here it terminated the BGEA's event because of the charity's Christian religion, a protected characteristic.

As it was accepted that the event was a lawful evangelistic outreach event, it followed that 'the decision to cancel was a breach of the Equality Act 2010 in that the event was cancelled as a commercial response to the views of objectors'. The Sheriff added that 'the lawful opinions of others, based here on religious or philosophical belief (whether mainstream or not) are not to be preferred one over another. All are protected.'

Accordingly, the Sheriff ordered that £97,325.32 be awarded to the BGEA in damages.

[Click here for the full judgment](#)

New anti-terrorism law proposed

The new draft Terrorism (Protection of Premises) Bill – named ‘Martyn’s Law’ in tribute to Martyn Hett who was tragically killed alongside 21 others in the Manchester Arena terrorist attack in 2017 – was published by the government on 2 May 2023.

The Bill forms part of the government’s response to recommendations made following the inquiry into the Manchester Arena attack. Its aim is to keep people safe and reduce the risk to the public from terrorist attacks at public venues. The Bill seeks to achieve this by placing new requirements on those responsible for certain public venues and locations to not only consider the threat from terrorism, but also to take action by implementing appropriate and proportionate mitigation measures.

The Bill covers a wide range of public spaces and ‘qualifying premises’, including places of worship, as well as shops and entertainment and leisure venues.

There are two tiers of premises within the Bill:

- **Standard duty premises** – those with a capacity of 100–799 individuals.
- **Enhanced duty premises** – those with a capacity of 800 or over.

Different requirements apply to each tier, with those for larger premises being more onerous.



There are about 40,500 church buildings in the UK that are open for public worship. Most of these churches have a capacity of 100 or more and will fall within the standard duty premises tier. They will be required to undertake low-cost and effective activities to improve security and preparedness. For example, providing appropriate terrorism-protection training to relevant workers, as well as undertaking a standard terrorism evaluation in which responsible persons consider how best their premises can respond in the event of a terrorist event.

Some churches have larger buildings or rent large entertainment venues and would fall into the enhanced duty tier if it wasn't for an important exception in the Bill that treats all 'places of worship' as standard duty premises. This means that (provided these churches don't impose an admission charge), they will only need to comply with the standard requirements, even though their capacity would otherwise put them into the enhanced tier.

The focus of Martyn's Law is to protect people from terrorism in large entertainment venues, and it is right that the government is taking action. However, questions still remain about how the Bill will operate and be enforced in practice. There are also concerns that even the less-onerous

measures in the standard duty tier may prove difficult or expensive for some small churches to implement where they rely heavily on volunteers to look after their buildings and run their church activities.

A new regulator will be introduced and will have powers of inspection and enforcement. The draft Bill will be subject to pre-legislative scrutiny by the Home Affairs Select Committee, ahead of formal introduction.

“Martyn’s Law aims to keep people safe and reduce the risk of terrorist attacks”

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