

New principles for charitable trustees exercising their powers of investment

In this fortnight's Private Wealth Planning series briefing, senior associate [Emily Grosvenor-Taylor](#) looks at the implications of Sarah Butler-Sloss and Ors v The Charity Commission and HM Attorney General

What has the court ruled?

The High Court of England and Wales has delivered a landmark judgment declaring that charitable trustees can take environmental goals into account when deciding how to invest a charity's assets, notwithstanding the risk of lower returns in following this approach.

Why is this important?

This judgment provides a timely update and clarification of the scope of the powers for charitable trustees who may be reviewing their current investment policy or are considering a new strategy which takes ethical considerations into account, as well as purely financial ones.

Why was the case brought?

The case was brought by the trustees of two charities – the Ashden Trust and the Mark Leonard Trust – whose principal purposes are environmental protection and improvement and the relief of poverty. Both charities are part of the Sainsbury Family Charitable Trusts network and hold approximately £42m and £22m respectively by way of assets. The charities work closely together and share the same investment managers.

The trustees sought the court's blessing for the adoption of their new investment policy to ensure that they were acting lawfully. More specifically, the trustees had proposed an investment policy which excluded from their portfolio any investments that did not align with the Paris Climate Agreement, signed in April 2016 under the United Nations Framework Convention on Climate Change. They wanted to know whether they could refrain from investing in profitable activities that would conflict with their charitable purposes.

What was the position prior to this case?

Until this point, the leading case in the area was *Harries v Church Commissioners for England*, also known as the Bishop of Oxford case, where it was decided that charity trustees should maximise their return on investments except where the investment explicitly conflicted with the charity's purposes. As the leading judgment on charitable investments, it was recognised that there was some uncertainty as to the interpretation of this case for charity trustees.

How did the Court approach the case?

The defendants to the claim were the Charity Commission of England and Wales and the Attorney-General. They invited the judge, Michael Green, J to deliver a judgment setting out the correct approach in law for charity trustees to follow in considering adopting an ethical or responsible investment policy.

In delivering his judgment, Michael Green J considered and clarified the decision in the Bishop of Oxford case and noted that trustees cannot make investments which are explicitly prohibited under the charity's governing document. However, he clarified that trustees have a discretion as to whether to exclude investments which potentially conflict with their organisation's charitable purposes, and they 'should exercise that discretion by reasonably balancing all relevant factors including, in particular, the likelihood and seriousness of the potential conflict and the likelihood and seriousness of any potential financial effect from the exclusion of such investments.'

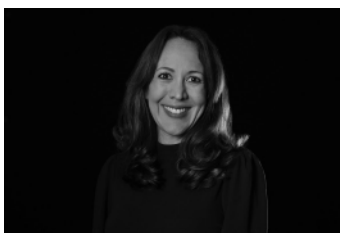
What else did the Court conclude the trustees could take into account?

As part of this consideration, the trustees can also take into account the risk of losing support from donors and the risk of reputation to the charity generally, particularly among its beneficiaries. However, Michael Green J recognised the care needed when making investment decisions on purely moral grounds where there may be differing views among the charity's supporters and beneficiaries. He concluded that if the trustees act honestly and reasonably and exercise good judgment by balancing all these relevant factors to adopt a reasonable and proportionate investment policy, they cannot be criticised, even if the court or other trustees would have come to a different conclusion. Accordingly, he considered that the trustees had properly exercised their powers of investment and approved their decision to adopt the investment policy.

Have the Charity Commission commented?

The Charity Commission have welcomed this judgment and plan to revise their investment guidance (CC14) in light of this decision.

If you would like to discuss any of the issues raised, please do not hesitate to contact the author or your usual Payne Hicks Beach contact



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